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AUTHOR Karp, Alan; Duryea, E. D.
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ABSTRACT

The evolution of academic government and its intersection with the corporate form in England during the late medieval through the early modern periods are reviewed. The following topics are considered: the English universities, transition to university control by the national state, transition to collegiate dominance of the universities, admission of undergraduates to college foundations, admission of fee-paying undergraduates, emergence of college tutorials and college lecturing, creation of college governing boards, and English corporations. A bibliography is included. (SW)

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ENGLISH ANTECEDENTS TO THE CORPORATE GOVERNMENT OF AMERICAN COLLEGES AND UNIVERSITIES

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Alan Karp
Teachers College, Columbia University

E.D. Duryea
State University of New York/Buffalo

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Association for the Study of Higher Education
The George Washington University
One Dupont Circle, Suite 630
Washington, D.C. 20036
(202) 296-2597

This paper was presented at the Annual Meeting of the Association for the Study of Higher Education held at the Washington Hilton in Washington, D.C. April 18-19, 1979. This paper was reviewed by ASHE and was judged to be of high quality and of interest to others concerned with the research of higher education. It has therefore been selected to be included in the ERIC collection of ASHE conference papers.

A pervasive trait of American higher education has been the influence of governing boards of lay trustees; groups of predominantly non-academic members exercising legal authority for their institutions in the form of private and public corporations.[1]

Two historical legal forms, intersecting in the American colonies, are responsible for this form of government: the lay board of trustees and the academic corporation. Under titles such as curatores, reformatores, and trattatores, the concept of non-academic trustees has precedents in the northern Italian medieval studia at Bologna, Padua, Florence, and Pisa (to cite a few examples); the Geneva Academy of Calvin and Beza; and the Dutch and Scottish universities established during the Reformation.[2]

As an organizational form for exercising at least some of the functions of governance, the educational corporation is also a legacy of medieval universities. It can be observed as early as ca. 1215 when the Parisian masters guild demonstrated a de facto corporateness.[3] The governing corporation of masters was adopted by all other medieval universities influenced by the educational and structural example of Paris, most notably, for our purposes, by the universities and constituent colleges of Oxford and Cambridge.

Higher education historians and commentators have commonly urged that our first colonial colleges, Harvard and William and Mary, were virtual replicas of contemporary English university colleges. Specifically, proponents of this view maintain that our earliest colleges were meant to be, as in England, autonomous corporations governed by their faculties; and that the invention here of external governing boards was a departure from the medieval heritage, a provisional artifice which unfortunately

bacame a characterisitc feature of American academic government.[4]

Revisionist interpretations have redressed such claims. American institutions of higher learning did not originate lay control boards; nor were they patterned after exclusively English collegiate models.[5] Herbst has demonstrated that Harvard, William and Mary, and Yale were created as unincorporated provincial Latin grammar schools governed by trustees representing the civil and ecclesiastical sectors of society. As such their system of government resembled more closely the organization of Reformed continental academies and independent Elizabethan grammar schools -- which were all governed by unincorporated external trusts -- than that of medieval universities or English university colleges.[6]

While it is an unquestioned fact that the original format for founding and governing our colonial colleges was an unincorporated trust, it is equally germane that this prototype was soon modified and that our debt to English collegiate structure is inherent to the nature of this change. By the mid-eighteenth century, the government of American colleges lay irreversibly with with external groups of lay trustees holding the status of corporations. The precedent was established in part by Yale and completed by the College of New Jersey or Princeton.

In 1701 the Connecticut Assembly empowered eleven ministers and their successors, designated as "trustees, partners, or undertakers," to found and manage the endowment for a "Collegiate School" in "such form & manner & under such orders & rules as to them shall seem meet." New legislation "for the more full and complete establishment of Yale College" followed in 1745. By the terms of this act the eleven trustees and their successors were declared an "incorporate society or body

corporate and politic" under the name "The President and Fellows of Yale College in New Haven." To this body the typical powers of corporations were attached: perpetual succession, use of a common seal, authority to receive and manage property for the benefit of the college, the right to sue and be sued, authority to elect and remove subsequent members of the corporation, and the power to enact, amend, and repeal statutes and by-laws governing the institution. In addition the trustees appointed all professors and officers, and conferred all degrees.

Yale, then, passed from a self-perpetuating trust to a corporation of clerical trustees who, except for the president, lacked fundamental connection with education yet possessed the right to govern the college.

The finishing touch -- the addition of non-ecclesiastics -- was achieved by the royal charters of 1746 and 1748 incorporating the governor of New Jersey, ten other lay gentlemen, and twelve ministers and their successors as a "board of trustees" to found and encourage the growth of the College of New Jersey. To accomplish this end the trustees were given the same powers as their Yale counterparts.[7]

These acts formulated a pattern of government which became characteristic of American higher education: the incorporation of a single self-perpetuating control board comprising non-academic persons representing the power centers of society. As Schmidt noted, "it did not take long for this form of organization to demonstrate its usefulness in the competitive, rapidly changing, and loosely governed American society."[8]

Certainly, structure is not the only instance of English practice in our colonial colleges, as an examination of the curricular and degree requirements, statutory provisions, names of college classes, kinds of students admitted, and the emphasis on residential college life

and discipline reveal.[9] Neither should we forget that, just as in the case of William and Mary, it was commonplace for English college founders to appoint trustees to establish the college and arrange for and manage its endowment until the corporation was sufficiently numerous and the college stable enough to govern itself.[10]

Admittedly, the English college was largely a self-governing body of head and fellows, whereas the colonial American governing corporation of trustees comprised representatives of the civil government and clergy whose chief occupation was unrelated to education per se. Yet for one concerned with structural roots, it was the eventual adoption of the corporate form as a governance unit that reflects a salient and durable influence in this country of the English university and collegiate model.

To better understand the formation of the American corporate system of academic government, it would, therefore, be beneficial to examine its English antecedents. Our purpose in this essay is to review the evolution of academic government and its intersection with the corporate form in England during the late medieval through the early modern periods.

The English Universities

English practices influencing colonial American education took form between the thirteenth and sixteenth centuries. Simultaneous to England's development into a national state Oxford and Cambridge lost much of their medieval character. The transformation was complex and was produced by myriad events, but two fundamental evolutions responsible for this alteration can be identified:

The transition from the concurrent jurisdiction for universities of pope and king to the sole authority of the king, and by implication the king-in-parliament.

The transition from the conception of the university as a unified corporate body obscuring its constituent parts, to its conception as a federation of largely autonomous colleges dominating university activities.

Transition to University Control by the National State

During the greater part of the Middle Ages the universities reaped the benefits of an informal alliance with English royalty. Enamored of the prestige associated with patrons of learning, monarchs indulged the universities as they would beloved albeit mischievous daughters. So long as the crown was confident of the masters' loyalty, it supported their efforts to gain corporate independence from church, municipal, and minor royal officials.

Once the Reformation was introduced, however, Oxford and Cambridge--the nurseries of ideas and opinions, and the training grounds of the clergy and increasing numbers of high born laymen--were too important to remain outside the purview of royal authority. National unity, created and symbolized by the crown, rested upon a delicate balance between and within the ecclesiastical and secular segments of society. The Tudor-Stuart state required harmony for its policies to succeed; it could ill afford academic critics and heterodox beliefs. For this reason the monarchy sought to regulate the universities directly and to place them under formal control. In so doing a legacy of governmental jurisdiction for universities was created that was inherited by the American colonists.

The transition from tacit royal approval of academic independence to its regulation and limitation is seen in the following account of the changing character of the chancellorship.

The chancellor originated as an ecclesiastical deputy appointed by the bishop in whose diocese the university was situated--Lincoln for Oxford, and Ely for Cambridge. The earliest Oxford reference to the title of chancellor occurred in a 1214 ordinance that clearly stated that the right of appointment belonged to the bishop of Lincoln. Cambridge's first chancellor was in office by 4 June 1225. Commissions of Gregory IX in

1231 and 1234 refer to the "chancellor of Cambridge" instead of chancellor of the university. Plainly, the church regarded him as a diocesan officer placed in charge of a group of clerks by the bishop.[11]

Examination of the chancellor's powers confirms this conclusion. As an ecclesiastical judge the chancellor had a court where he presided according to the spirit of canon and Roman civil law, punishing moral delinquents with sentences of excommunication, penance, revocation of the teaching license, forfeiture of university privileges, fines, imprisonment, and suspension and banishment from the university and town. Clearly, the chancellor's spiritual and disciplinary powers stemmed from the clerical status of the masters and scholars, rather than from their university affiliation per se. By its very nature this jurisdiction was derivative for only a dignitary such as a bishop could delegate such broad authority.[12]

The Cambridge constitution of ca. 1250 stated unequivocally that the regents elected the chancellor, yet there is no doubt that he was an episcopal appointee. Oxford was 120 miles and Cambridge sixteen miles from the administrative centers of their dioceses--distances too great for the bishops to spend much time at the universities or to be personally acquainted with all the masters. For this reason, and considering the amicable relations between bishop and university at this time, it is safe to assume that by ca. 1250 it was customary for the regents to nominate the chancellor, and that the bishops of Lincoln and Ely tacitly conceded this while reserving the right to confirm or reject the nominee. It is within this context that we can agree with Rashdall's statement that the chancellorship, just after its creation, passed "naturally and insensibly" into the position of an elected corporate head.[13]

As ecclesiastical corporations Oxford and Cambridge were subject to

the spiritual jurisdiction and general oversight of the English prelacy. First at Oxford, however, and then at Cambridge the universities began to press for independence from external authority. At thirteenth-century Oxford the dispute centered around three issues: the university's ability to enact statutes independent of the bishop, the relative jurisdiction of the chancellor and bishop over university members, and the chancellor's standing as an autonomous corporate head or an episcopal appointee. Cambridge, virtually an episcopal creation, prospered from its friendship with the bishop of Ely. Consequently, problems did not surface until much later and were mostly confined to the third issue.[14]

Oxford won its independence from prelatic authority through papal bulls in 1370 and 1395, largely through the device of alleging non-existent customs. As Rashdall commented, almost all of the chancellor's independent jurisdiction, while ultimately sanctioned by royal and papal franchise, was "in the first instance acquired simply by usurpation." Any encouragement Cambridge needed was provided by Oxford's success. The younger university obtained autonomy from the bishop of Ely in 1401 and complete freedom from ecclesiastical authority in the Barnwell Process of 1430. It is no surprise that Cambridge based its entire case for independence on two forged papal bulls probably manufactured for this purpose. The universities were now independent corporations with heads elected by the masters, but it is noteworthy that this was achieved by premeditated duplicity lacking the slightest concern for the veracity of their claims.[15]

Simultaneous to these controversies, the chancellors engaged the town burgesses in jurisdictional disputes which, with the consistent support of royal charters, established the universities' autonomy from their municipalities and extended the chancellor's authority as a lay judge. Probably

by 1390, and definitely by 1406, the chancellors of both universities were empowered to hear and decide all suits (civil or criminal, ecclesiastical or secular) in which a scholar or privileged person of the university was a litigant, even if the other party was a layman. Only causes involving treason, mayhem, felonies, and freehold tenures were beyond the chancellor's competence, and in 1406 Henry VI created for Oxford the office of high steward with the stated purpose of removing from the courts of common law all such exceptions save freehold tenures. Cambridge received the same privilege ca. 1418.[16]

Royal patronage was responsible for the tremendous growth of the chancellor's powers and for furthering university independence from external authorities. But if the king was the champion of university liberties he could also be the instrument of their revocation when the masters were thought to abuse their privileges. Such was the king's response to the affair created by the radical theology of John Wyclif and his Oxford disciples.

Oxford was purged of its Wyclifite sympathizers through the unrelenting proceedings of the 1382 Blackfriar's Council chaired by William Courtenay, archbishop of Canterbury, and supported by Richard II who provided the legal and coercive apparatus to root out the dissenting members of so independent a corporation.[17] Still, the affair was far from settled.

In 1395 Oxford obtained a papal exemption from metropolitical jurisdiction. Two years later the university was compelled to surrender the privilege by Richard II and Thomas Arundel, the new English primate, thereby precipitating the university's most serious clash with external authority in the Middle Ages. The strife during these years, ending finally in 1412 with the restoration of archiepiscopal jurisdiction, is often interpreted as a contest initiated by Arundel to enforce orthodoxy in a university set on expounding Lollardy. Undeniably, Arundel and the king suspected Oxford of

harboring Lollards and this probably accounts for their desire to reestablish archiepiscopal visitation rights, but there is little evidence of true Lollard activity at Oxford after 1382. Rather, this historic confrontation was essentially a struggle for academic autonomy centering around the lost papal exemption.[18]

Arundel received royal support at every crucial juncture of the struggle. In March 1397 Richard II commanded the university to renounce the bull and sent a notary to insure compliance. In June of that year Richard upheld the archbishop's visitorial authority even though the university claimed this was a singular right of the king. Henry IV denied Oxford's plea to restore its exemption and in July 1411 he petitioned Pope John XXIII to annul the bull. During September Henry forced the chancellor and proctors to resign (they were eventually restored) and, together with parliament, declared the exemption invalid while reaffirming the archbishop's right to visit the university. Finally, in November, the pope revoked the bull.[19]

The events of 1382-1411 ushered in a new royal policy: direct intervention in university affairs when academic autonomy threatened the nation's security. As Henry explained in his appeal to Pope John, Oxford obtained the exemption only "to escape the too near correction of the archbishop," and it proved "prejudicial to the catholic faith and the church of God and the king's crown." The motive for this statement was two-fold. The civil unrest during the Peasant's Revolt of 1381 was blamed on the spread of Lollardy among the laity, while some of Wyclif's doctrines were so openly dangerous they could influence profoundly orthodoxy at the highest levels. Most of the ecclesiastical hierarchy was now recruited from university graduates and most government civil servants and counselors were still clerics. Although there was scant evidence of Lollardy at Oxford after

1382, the mere threat of that heresy infecting future generations of the clergy provided a powerful motive for the king's unprecedented interference in university affairs. It was, in short, the universities' status as nurseries of England's leadership that necessitated a mutually supportive relationship between the king and prelacy to insure the training of orthodox and loyal graduates. Clearly, the king was beginning to limit the universities' freedom of action; henceforth, academic liberties would more and more depend upon the masters' conformity to official policy.[20]

Westminster rather than Rome now loomed as the authority to which the universities must respond. Accordingly, Oxford and Cambridge felt the need for representation at the royal court. The university chancellorship originated as an episcopal deputy and soon became the elected head and chief executive officer of the academic corporations---a resident graduate chosen to a two-year term for his intellectual distinction and administrative skills. During the mid-fifteenth century the office underwent a radical transformation. Although still elected by the university, the chancellor became a non-resident clerical politician (and ultimately a layman) chosen because of his influence with the English court and hierarchy and serving until he saw fit to resign.

A permanent change was anticipated at both universities a century earlier, coinciding with the advent of a patronage crisis (ca. 1340- ca. 1430) which diminished enrollment as graduates faced increasing difficulty in securing benefices.[21] In order to influence patronage brokers, Oxford and Cambridge began to elect as chancellor men of high birth, wealth, or prominence in the church and government.

At Oxford the trend to elect an habitually non-resident prelate-statesman or man of wealth became firm policy during the 1430s.[22] Nineteen different men served as chancellor between 1434 and 1509. Of this

group, two were simultaneously primate and chancellor of England at the time of their election, four were already bishops, three became bishops during their tenure, two became bishops after leaving Oxford and five were elected because of their political connections. Just three were chosen because of their scholarly achievements. Similar results are observable at Cambridge. Seventeen men held the chancellorship between 1433 and 1509, but education was the principal occupation of only two. Five were already prelates (and one of them also became chancellor of England while serving the university), four became prelates during their university association, three were promoted to the episcopacy after resigning from Cambridge, and three (of whom two were nobles) were elected because of their influence with the court and hierarchy.

The choice of prelates and well-placed members of the government and hierarchy was a deliberate policy intended to meet the demands of the fifteenth-century political climate. Oxford had recently lost its exemption from archiepiscopal jurisdiction through the coercive measures of the crown, and Canterbury's right to visit de iure metropolitico was upheld by parliament. It was painfully obvious that the king's new role in university affairs necessitated a chancellor with the political clout to protect university interests. On the other hand, Oxford and Cambridge trained the nation's clergy and civil service, and were influential in shaping public opinion. The crown and hierarchy, therefore, needed a trusted representative to oversee the universities. For these reasons, the universities elected as chancellors men at the center of government whose position enabled them to lobby for the university at the highest levels while interpreting to the masters the expectations of the king and prelacy.[23]

Electing such men to the chancellorship made Oxford and Cambridge

more dependent on external authorities (formal exemptions notwithstanding), but the universities coveted their dependence. Oxford, for example, elected Archbishop John Morton in 1495 because his "powerful protection has alone enabled the university to stand against . . . its numerous enemies." When Morton agreed to accept only if he could delegate university business to a resident deputy and dispense with the oath of office, the masters were quick to accept under any condition "for otherwise we should indeed be blind to our own interest."[24]

The transition of the chancellorship constituted part of a broader evolution whereby the king was beginning to exert his influence over most aspects of university life. During the second half of the fifteenth century we note a growing effort to bring university and college posts within the system of royal patronage. For example, in 1483 or 1484 Richard III recommended that William Ustwayte be admitted to a fellowship at Queens' College, Cambridge, just as "such persons preferred whom we heretofore. . . have recommended to you." Royal nominations to the position of faculty bedel at Oxford were made repeatedly on behalf of courtiers' servants. In some cases the university circumvented "recommendations" on the grounds that the nomination arrived too late or that it would force the masters to violate their oath to conduct impartial elections, but other times the universities relented. Thus when Cambridge elected John Booth as chancellor in 1463, the residence requirements of the office were dispensed with at the king's command. In the same year Oxford twice granted certain regents residency dispensations at the request of the king and queen-mother.[25]

The chancellorship too was falling prey to royal nominations, although here the universities were anxious to comply. Bishop William Dudley, to

cite an example, was elected as the Oxford chancellor in 1483 in the express hope it would please Richard III. In October 1491, upon learning that John Russell intended to resign, Henry VII ordered Oxford to postpone electing a successor until the king's pleasure was made known. When Russell died, Henry gave the university a choice between two bishops---William Smith and Thomas Savage---and instructed that any statutes preventing their election be dispensed with. By the time the letter arrived, however, John Morton (archbishop of Canterbury and chancellor of the realm) had been elected---to avert the dangers of a headless corporation, the university explained, not to rebuff the king's choice. As proof of its good intentions, the university elected Smith after Morton's death in 1500.[26]

These measures became set policy in sixteenth---and seventeenth---century England. Taking advantage of their authority to suspend and dispense with college and university statutes (a power inherited from the papacy after the Reformation), the Tudor and Stuart monarchs attempted to govern the universities by election mandates. No academic office or activity was safe. Mandates were issued concerning college fellowships, college and university offices and professorships; others excused favorites from fulfilling statutory degree requirements and granted leaves of absence and non-residence. All this was done by royal dispensation from any statute that might prevent the desired action.[27]

So prevalent was the practice of royal nominations and dispensations that in 1579 a number of Cambridge college heads, together with the fellows of Trinity College, protested to their chancellor Sir William Cecil, the lord Burghley. Not only were the protesters unhappy with the general policy, but, they complained, many mandates ordered that the bearer be admitted

to a college position without regard for his qualifications and even without there being a vacancy. Burghley discussed the matter with the queen, but Elizabeth merely warned her secretaries to pay closer attention to college statutes when preparing mandates for her signature. Significantly, Elizabeth made no attempt thereafter to limit her authority to issue mandates.[28]

Legislation during the Reformation prepared the way for the crown to formally impose its authority over the universities. By means of parliamentary acts in 1533 and 1534, England was declared a sovereign national state free from the jurisdiction of foreign potentates, and governed by an omnicompetent ruler who at once was king in temporal affairs and supreme head of a national church with absolute powers in ecclesiastical matters. Henry VIII's break with Rome completed the process of changing the universities' relationship to the crown. Since the king acquired the pope's jurisdictional and administrative powers over the church, the universities and their colleges, were made officially and directly responsible to him. For example, suits once appealed in Rome from the university chancellor's court were now heard by the chancellor of England. Another act decreed that the visitation of ecclesiastical societies such as colleges and universities was reserved exclusively to the king by commission under the great seal.[29]

Royal control was exercised in two ways. The first came in the form of visitations. In 1535 commissioners of Henry VIII conducted an official visitation of Oxford and Cambridge in conjunction with their more notorious investigations of the monasteries and other religious houses whose possessions were confiscated into the king's hands. The main purpose of this visitation was to obtain the universities' subscription to the royal supremacy.

Academically, this was supplemented by abolishing the faculty of canon law, replacing theology works emphasizing papal primacy with bible study, and requiring humanist works and languages as aids for reading Scripture.[30] Edward VI, Mary, and Elizabeth continued Henry's visitation policy to enforce their particular brand of religious orthodoxy, each sovereign issuing statutes and replacing suspect college and university members in an effort to encourage conformity. Regardless of the lasting impact of these visitations they did serve to formalize university dependence upon the crown.

A second manifestation of royal control took the form of what might be called charter revision. In 1570 Elizabeth's commissioners gave a statutory code to Cambridge which prescribed in detail the government of the university. The following year parliament confirmed all previous royal charters and incorporated the universities anew under the names of their chancellors, masters, and scholars. Oxford and Cambridge now became royal institutions of a sort significantly different than those established by the royal supremacy in ecclesiastical affairs. The act recognized no past or present authority for the universities save that of the crown, and by implication the crown-in-parliament. The language of the statute, then, established the English universities as creations of a sovereign national state. The final stage in the process of charter revision occurred in 1636 when William Laud, archbishop of Canterbury and Oxford chancellor, issued the famous statutory code bearing his name. As did the Elizabethan statutes for Cambridge, Laud's code brought Oxford within the scope of royal jurisdiction by placing university government in the associated college heads, a group the crown believed it could control by managing their election through mandates.[31]

The legislation and actions described above terminated any remaining vestiges of the universities' medieval independence. Oxford and Cambridge

officially owed their privileges, indeed, their corporate life to the king's pleasure or that of a national state.

Transition to Collegiate Dominance of the Universities

A significant departure from medieval practice lay in the transition of the English college to a dominant position within the universities. It is our purpose here to trace some of the principal features of this transition, since the educational role and internal corporate organization of the autonomous, self-contained English college produced by the transition are among the major influences on the founders of our early institutions of higher education.

Most medieval scholars had three options for lodging. The oldest was to hire a room or chamber in town. A second option (at least for the wealthy) was for a scholar to rent an entire house for himself and his servants. The typical practice was to live in a hospice--usually known as a hall at Oxford and hostel at Cambridge--a building governed and leased on a yearly basis by a master called a principal who then rented rooms to young scholars. Hospices, which were unincorporated, first emerged in the thirteenth century and soon became the primary undergraduate residential facility.

In order to bring scholars and principals within the system of university discipline all undergraduates were eventually required to live in a hall (or college) under the government of a principal approved by the chancellor. Oxford passed such legislation ca. 1410 as did Cambridge later in the century, while other enacted reforms of this period similarly aimed to fortify university authority over halls and their members.[32]

Halls were popular because they offered well-kept accommodations at reasonable cost, locations convenient to the university schools, and (in

the fourteenth and fifteenth centuries) the opportunity to participate in disputations, obtain tutoring, and hear lectures by the principal or his appointee. These educational uses were, of course, meant to supplement the public instruction of the university's regents.[33]

During their primacy there were about 80 halls at Oxford at any one time, while 136 hostels have been identified at Cambridge, of which 20 to 30 were in operation simultaneously. The universities gave them a virtual monopoly over undergraduate residence but by the mid-fifteenth century the halls and hospices began to disappear. There were 69 Oxford halls in 1444, 50 in 1469, 31 in 1501, 12 in 1514, and just 8 in 1552. At Cambridge only nine hostels survived by 1552.[34]

The halls perished for a number of reasons. Some were lost because the principal lacked sufficient boarders to justify renewing the annual lease, others were merged to form larger halls or were used as part of the sites for new or expanding colleges. But the most important reason for their decline was the admission of fee-paying undergraduates to the colleges. This doomed the halls and hostels because they could not offer to potential residents the same advantages as the colleges: the constitutional and economic security provided by incorporation and endowments, relatively luxurious physical plants, and sufficient numbers of graduates to lecture and tutor once the universities' system of public instruction fell into disarray. Ultimately, all the surviving halls were absorbed by the colleges to ease their housing shortages. Thus the seven halls remaining at Oxford in 1559 were all owned by colleges, as were the nine Cambridge hostels in 1573. In the 1580's, after a period of great enrollment increases, one-third of the Oxford undergraduate population lived in college-owned halls.[35]

Colleges differed both from halls and hostels and from universities. A medieval hall was simply a building leased to a principal on annual terms for use as a primarily undergraduate boarding house. It had no founder , endowment, or corporate charter. Oxford and Cambridge originated as self-help guilds of masters associating voluntarily to pursue a common interest in teaching. Customs and written statutes were fundamental in transforming the guilds into corporations with privileges obtained in piecemeal fashion. University statutes regulated academic life; they had little concern with the masters' private lives aside from their status as clerks, and did not fully bring undergraduates within its disciplinary system until the fifteenth century.

By 1274 (the year Oxford's Merton College was incorporated) enough Roman law had been recovered by canonists and civilians to permit the creation of corporate bodies. Most of the English colleges were therefore founded by charter as perpetual eleemosynary corporations with defined corporate powers in definite years. The corporation was governed by the members and an elected or appointed head whose administration was conducted according to the founder's statutes. Externally the society was subject to the oversight of a visitor named by the founder to insure that his purpose was carried out. Colleges were founded to promote charitable ends and enable a set number of poor scholars to undertake a free education. Early foundations were intended for graduates. Members lived together under a common rule of life characterized by a strict disciplinary code detailed in the statutes. All members were required to offer prayers for the founder both during life and after his death, and in this respect colleges resembled chantries. Colleges had their own statutes, customs, officers, property and revenue, and admission criteria. Except for the proviso that collegians meet university degree requirements and observe university statutes,

the colleges were independent from their parent university corporations.

The typical Reformation college was a mixed society with a hierarchy of classes. At the top were the fellows--graduate members who studied for advanced degrees if they were not already doctors. The fellows, or a select few of the most senior of them, governed the college and served as tutors and lecturers for the junior members. Below the fellows were undergraduate scholars studying in the college for the baccalaureate. Junior members had no part in corporate government, but instead lived in the college either as part of a second class on the foundation or as fee-paying residents.

Originally, colleges were confined to graduates and "fellow" was the only class on the foundation. A few undergraduates or grammar school boys might have occasionally lived in a college but, until the mid-fifteenth century they were an insignificant element in college life. Once colleges began to admit undergraduates in large numbers, however, the end of an era was signalled for it was due to this policy that the colleges both assumed a prominent position in the university and effected an internal reorganization that was borrowed by the American colonists.

Admission of Undergraduates to College Foundations

An "undergraduate," for our immediate purposes, is defined as a student who has completed grammar school, is ready to begin the arts course, and receives a stipend as a recognized member of the foundation. Balliol and Exeter Colleges at Oxford occasionally admitted undergraduates in the thirteenth century, but they failed to distinguish between fellow (socius) or scholar (scholaris) in the sense of distinct grades. All undergraduates were admitted as fellows and, at any rate, their number was so few that we must look elsewhere for the origin of under-

graduate admissions.[36]

William of Wykeham, who founded New College, Oxford in 1379, is often regarded as the first to admit large numbers of undergraduates to a college foundation, and to recruit them from an independent grammar school.[37] Recent investigation, however, proves that the catalyst in both instances was King's Hall, Cambridge. Originating in 1317 as an undergraduate society the college, by 1350, evloved into a mixed corporation of graduates and undergraduates. There was no probationary period so undergraduates were full members upon admission. Until 1417 most of the undergraduate fellows previously attended the grammar school operated by the dean of the chapel royal. Although it was a mixed society there was but one class on the foundation. All members were interchangeably called socii or scholares and all had the same rights.[38]

New College was another early example of a mixed foundation. Wykeham's statutes specified that except for founder's kin all new members must be recruited from his grammar school at Winchester, and serve a two-year probation during which they were known as probationary scholars unable to hold office or participate in college government. Technically, the statutes recognized one class on the foundation--that of true and perpetual fellow--regardless of educational level. But Wykeham did anticipate the later division of college foundations into graduate fellows who governed the college and undergraduate scholars who had no voice in college management.[39]

Apart from King's Hall and New College, college foundations were still composed primarily of graduate fellows, but further inroads were made in the fifteenth century. Three of the five Cambridge colleges and one of the three Oxford colleges founded in this century provided for undergraduates on the

foundation. Godshouse (later Christ's College) was founded at Cambridge in 1439. All but one of the twenty-five foundation members were required to be undergraduates at the time of their election, but the statutes recognized just one class (fellow or scholar) and all shared equally in the governing process. The King's College statutes (1453) were based on the examples of King's Hall and New College (except that in this case undergraduates were recruited from Eton). As a result the foundation contained a single class, but did forbid participation in college government until the member completed a three-year probation and became a perpetual fellow. Queen's College was founded in 1448 as a graduate society but its statutes of 1475 recast the foundation to comprise twelve graduate fellows and three undergraduate bible clerks or poor scholars who were excluded from college government.[40]

Magdalen College, Oxford (1448) was the first English college with two distinct classes on the foundation. The statutes provide for thirty demies or medii communarii (so named because they received a commons allowance equal to half that for fellows) who were to study grammar and then the arts course. Demies received stipends until they were twenty-five, but were then expelled unless elected to a fellowship. Since the fellows governed the college, they were required to be graduates.[41]

Magdalen had a profound effect in preparing the way for the mixed corporation that characterized the Reformation period. Many of the older colleges soon acquired a class of undergraduate scholares either through new benefactions or by independent act of the society.[42] Moreover, eight of the eleven colleges founded at both universities in the sixteenth century followed suit; and of the three that did not, one followed the New College plan while another

provided for future undergraduate admission pending further endowments. In general, then, the typical college had two classes on the foundation: graduate socii who managed the society and undergraduate scholares or discipuli (pupils or disciples) studying for the baccalaureate. Undergraduates had no legislative authority and, while given a preference for vacant fellowships after graduation, were compelled to leave the college if not so elected.

Admission of Fee-Paying Undergraduates

Only a select few were able to obtain scholarships on college foundations. The bulk of the undergraduate population gained admission to colleges as boarders whose fees entitled them to participate in all collegiate activities except governance. Once this movement began in earnest (about the mid-fifteenth century), it was just a matter of time before the halls and hostels disappeared.

Early colleges had statutory authority just to admit foundation numbers. Those societies permitting occasional boarders accepted only graduates (usually ex-fellows) for the purpose of filling vacant rooms with compatible men to provide friendship and share expenses with the members.[43] College revenues, however, derived principally from fixed rents which eroded in value due to the inflation of the fifteenth and sixteenth centuries. Fee-paying undergraduate boarders therefore provided a means for college to recoup their losses and for fellows to supplement stipends once the tutorial system arose. The presence of tutors, moreover, encouraged the parents and guardians of young aristocrats to send their sons and wards to colleges, thereby creating ties which might lead to later benefactions and favors.[44]

King's Hall, Cambridge was the first English college to admit fee-paying

undergraduates. Beginning in the 1430s this royal society occasionally took in undergraduate pupilli who paid half-commons and studied for limited periods under college tutors. Formal statutory provision for such admissions was first made by Bishop William Waynflete, founder of Magdalen, Oxford. The statutes of 1480-83 permit the admission of twenty commensales or "gentlemen commoners," who lived at their own expense under the supervision of tutors.[45]

From King's Hall and Magdalen, the practice rapidly spread. Every new sixteenth century college at both universities provided for undergraduate boarders under the government of tutors, while existing societies revised their statutes accordingly. Some colleges admitted set numbers, others as many as could be accommodated. A few (the gentlemen commoners) stayed a short time to round out their education, but most took their degrees and some even were elected to fellowships after graduating. The usual Oxford term to describe this class was communarius, indicating that he paid his own commons, or board, while the prevailing Cambridge term was pensionarius, so called because the student paid a pensio or rent for his room.[46]

The policy of admitting young scholars who were not on the foundation and paid their own expenses enabled the colleges to replace the halls and hostels as the principal undergraduate residences. Certainly, undergraduates were drawn to the relatively luxurious appointments of the colleges, but the principal attraction was educational--the system of tutoring and lecturing by which the colleges eventually surpassed the universities as instructional centers.

Emergence of College Tutorials

Pupillus and tutor are terms of the Roman law of guardianship. A pupil

was a minor (for example) assigned to the care of a guardian or tutor who acted in loco parentis and enabled the ward to engage in acts by which property rights were created, transferred, or ended.[47] When applied to the academic world, this suggested the basis for the relationship between a college tutor and his pupils.

In the fully-developed tutorial system of the seventeenth century, tutors served as guides to learning and guardians of finances, morals, and manners. Tutors instructed junior members both on and off the foundation; handled their finances and were responsible for their expenses; supervised conduct and social life; offered career advice; advised pupils about books, friends, and health; assisted in obtaining fellowships and other preferments; sent parents progress reports; and otherwise acted in loco parentis.[48]

The tutor's office was developed in response to the diversification of the collegiate population caused by undergraduate admissions, and the accompanying need to provide for their education and socialization.

Early colleges such as Merton and Peterhouse were essentially homogeneous graduate societies offering fellows a home and the means to study for advanced degrees. On the other hand it was customary for senior members to assist younger colleagues with their studies, oversee their behavior, and set examples of righteous living.[49] This was the tutorial system's origin but it was informal, carried no pay, merely supplemented university instruction, and was limited to members of the foundation.

These unstructured tutorials combined informal instruction (and just how much is debatable) with disciplinary supervision and moral development. Progress was made when Wykeham introduced salaried tutors at New College. His 1379 statutes (revised in 1400) required each new member to study during his three-year probation with an informator appointed from the senior fellows in his

faculty.[50] As the first Oxford founder to admit large numbers of undergraduates to the foundation, Wykeham obviously meant to assist inexperienced students by supplementing university instruction. There is no evidence, however, that the informatores had disciplinary functions, supervised finances, or taught students off the foundation.

Such duties were made part of the tutor's function at Magdalen College. Waynflete's statutes (1480-83) stipulate that all undergraduates (foundation demies and fee-paying commensales) as well as young fellows (many of whom were still undergraduates) study logic and sophistry for three years with salaried tutors known as creditores, tutores et fidejussors, informatores, and most commonly as "creancers" or creditors. As informatores fellows appointed to the position taught and exercised disciplinary jurisdiction while they acted as sureties and were responsible for paying their students' college expenses in the capacity of creditores and fidejussors.[51]

King's College, Cambridge was another fifteenth-century foundation to begin organized tutorials. The 1453 statutes, following the example of New College, required salaried informatores appointed by the college provost and dean of the arts faculty to instruct undergraduate probationers and bachelor fellows for three years, and to maintain discipline among them.[52]

The educational programs at New and Magdalen have been hailed as landmarks since almost every secular university college founded after Magdalen admitted fee-paying undergraduates and provided them with tutors and (as we shall see) lecturers. Wykeham's informatores have been acclaimed as "original features" that would "revolutionize" Oxford education by superseding university instruction and thereby transform the university into "a federation of educationally independent and isolated colleges." Waynflete

is celebrated as the first to expressly admit undergraduate non-foundationers, in statu pupillari.[53]

Undeniably, both founders contributed to the further development of the tutor's office, but their originality is exaggerated. The informatores performed just one duty of seventeenth-century tutors--teaching. Waynflete was the first to formalize most of the tutor's functions in written statutes and to make statutory provision for tutoring undergraduate commoners, but King's Hall, Cambridge developed essentially the same program on an informal basis at least twelve years before Magdalen was founded and almost fifty years before Waynflete codified his statutes. Between 1436 and 1502 King's Hall intermittently admitted undergraduate pupils and, for parts of one or two years, assigned them to tutor standing in loco parentis by sharing their chambers, handling expenses, overseeing conduct, and giving private instruction at rates probably negotiated with their pupils' parents or guardians. Typically, a tutor had one pupil at a time, but a few had two or more simultaneously and others had pupils for an unbroken period of three or four years. King's Hall did not evolve a full-pledged tutorial system because it was a sporadic rather than official and yearly policy. Nevertheless, it contained many elements of the sixteenth and seventeenth century tutoring arrangement that, together with college lecturing, monopolized university teaching.[54]

Emergence of College Lecturing

Until a rival and free educational system first appeared in several fifteenth-century colleges, public instruction in the university schools was the unchallenged province of the regents. Although any lectureship was bound

to compete with the regents, some were more threatening than others. A private lectureship confined to members of one college withdrew comparatively fewer students from the university than did a public one open to all.

Mullinger believed the first college lecturer was named in the 1506 statutes of Christ's College, Cambridge. There were, however, at least five colleges with lecturers before Christ's. The first was Godshouse, founded in 1439 by William Byngham and later continued and enlarged as Christ's. The 1495 statutes appoint a salaried lector or reader to give college lectures in sophistry, logic, and philosophy. Chosen from the fellows, the lector was responsible for all college teaching and scholastic exercises. Records of 1451 hiring Ralph Barton prove the office existed by that date. This is the earliest concrete evidence of a college lecturer and the historian of this college therefore maintains that as the first institution with its own lecturer Godshouse initiated the system which ultimately replaced university teaching.[55]

Cobban discounts this claim because Godshouse, founded solely to train grammar masters, could accomplish its special purpose only with its own lecturer. The office should therefore be regarded as a case apart from the main evolution of college lecturers rather than an innovation intended to compete with university teaching.[56]

Although Godshouse was the only college devoted to the preparation of grammarians, Cobban has overlooked important evidence. Royal letters patent of 1446 expanded the college's scope. Scholars were to be instructed "not only in the faculty of grammar, but also in the knowledge of the other liberal faculties." This document was never acted upon but the foundation charter of 16 April 1448 included the same phrase. The statutes, moreover, required

fellows to study logic, rhetoric, and philosophy for two (and preferably three) years before attempting the "subtler and deeper parts of grammar" and proceeding to the grammar mastership. After determining, fellows disputed in philosophy and theology as well as grammar. Those not called upon to teach grammar were to continue in arts and incept M.A. Finally, the lector taught sophistry, logic, and philosophy and presided at sophisms and disputations. When Barton was hired in 1451 he was also to lecture on the poets and orators. Comparison of the Godshouse lector and the Christ's College "domestic reader" indicates that the only difference was that the latter did not give specialized grammar lectures. Clearly, the Godshouse lecturer taught undergraduates and bachelors arts as well as grammar. Apart from the grammar specialty, Godshouse members received essentially the same education during their first three years as the rest of the university.[57]

The degree to which the Godshouse lector was a strictly private reader has also been exaggerated. The terms of Barton's employment stated that he must admit to his lectures without cost any member of the university wishing to attend. If the desire to supplant university instruction was determined by availability, the Godshouse semi-public lector was as accessible as lecturers at many later colleges. It appears, then, that Godshouse was the first college to have a lecturer and began the movement that ultimately replaced the university regents.[58]

Private salaried lecturers for graduates were next instituted at King's College (philosophy) and Queens' College (theology). King's Hall was the second Cambridge foundation with a semi-public lecturer. In 1492 Robert Bellamy bequeathed a legacy to endow a lectureship in canon law. The first known appointment was made in 1502-3. Lectures were open without charge to

fellows and all poor clerks in the university, although a clerk believed to have an adequate stipend needed the lecturer's permission. The lectureship was probably discontinued in 1528-29 and definitely by 1535 when royal injunctions abolished the study of canon law.[59]

The 1480-83 statutes of Magdalen established the first salaried college lectureships at Oxford. Each legible day, lectures in moral philosophy (metaphysics), natural philosophy, and theology were delivered by praelectores without charge to all members of the college and university wishing to attend. These posts were not designed as sinecures for Magdalen fellows since the statutes required the election of the most qualified men in the university. If the successful candidate was not already a fellow he was to immediately be elected to the next vacancy. The statutes also instituted private college grammar lectures.[60]

Magdalen was the first English college offering members the opportunity to take their entire education under collegiate auspices. Upon entering as a demy the student learned grammar from a grammar master and usher. Tutors gave undergraduate instruction in logic and dialectics, while undergraduates and graduates studied philosophy and theology with the praelectores. Only fellows studying law and medicine had no regular college instruction and they were an unimportant part of the foundation, existing on sufferance.

The success of Waynflete's educational program established college lecturing as a permanent feature of English academic life. Every subsequent fifteenth-and-sixteenth-century foundation established public, semi-public, or private lectureships in their foundation statutes or in early revisions. The most notable were the public "herbalists" in Latin, Greek, and Hebrew provided by Bishop Richard Fox in his "bee-garden" at Corpus Christi, Oxford.

To keep pace, most of the older colleges also began public and private lectures. Stimulating their creation were the 1535 royal injunctions requiring all colleges to found gratuitous public lectureships in Latin and Greek. Later in the year additional injunctions mandated college lectureships in Greek or Hebrew.[61]

So popular was collegiate lecturing that, we are informed by a 1564 account attributed to Matthew Parker, archbishop of Canterbury, the colleges had enough lecturers to assume the entire burden of formal instruction. By the mid-sixteenth century, then, the English colleges had become self-contained centers educationally independent from the universities. As one nineteenth-century critic put it, teaching had become a "private monopoly" and the colleges "so many little universities."[62]

While the colleges were developing their lectureships, Oxford and Cambridge made an effort to rejuvenate their instructional system by creating a salaried university-wide professoriate. Although the public professors replaced the regency system, the movement failed to revive the universities proper as viable teaching institutions. It is beyond our scope to inquire into the reasons for its failure, but we can briefly relate its growth.[63]

Lady Margaret Beaufort endowed divinity chairs bearing her name at both universities in 1503. She was followed in 1518 by Sir Robert Rede who endowed at Cambridge three lectureships, popularly known as the Terence Readers, in philosophy, logic, and rhetoric. In 1524 the humanist Thomas Linacre obtained a royal license to endow medical lectureships which his executors finally established in 1550. Oxford's Merton College received two of the chairs and St. John's, Cambridge a third. These colleges paid the lecturers' salaries, filled vacancies, and, by statute, gave preference to

their own fellows.[64]

By act of parliament in 1536 Oxford and Cambridge were excused from paying first fruits and tenths. In return the colleges, halls, and hostels were ordered to pay for a university lectureship to be called "King Henry the Eight his lecture" in any field the king should determine. Each college was assessed according to its ability to pay and this arrangement continued until the lectureship was replaced by the Regius professorships. In 1540 Henry VIII founded royal or Regius professorships at both universities in civil law, divinity, medicine, Greek, and Hebrew. Within six years the salaries of the divinity and language professors were paid by the royal foundations of Christ Church, Oxford and Trinity College, Cambridge.[65]

University professorships continued to be endowed throughout the seventeenth century. Much was expected of them, and particularly of the Regius professorships. More regular provision was made for instruction in the faculties concerned than previously existed, but the movement in general was disappointing, chiefly because the chairs soon became an almost exclusive preserve for college fellows even though their foundation statutes often required university-wide competition. In the final analysis, the colleges, with their tutoring and lecturing facilaties achieved an irreversible monopoly in teaching. As for the salaried professoriate, its primary accomplishment was to keep alive (barely) the notion of university instruction until it was finally revitalized in the nineteenth and twentieth centuries.

Creation of College Governing Boards

Authority in the Middle Ages depended largely upon age. Minors had few societal rights and the universities reflected this aspect of medieval cul-

ture. The bachelor's degree, for example, was considered merely a preliminary step to the magistracy. Only masters were deemed proven scholars qualified to sit as equals in university assemblies and participate in governing the studium.

So long as the colleges were essentially graduate societies of masters there was no need to make formal distinctions within the membership. All full members shared whatever powers of corporate self-government the statutes assigned to the college.

Undergraduate admissions radically changed collegiate populations and organization. Governance had traditionally been reserved to fully incorporated members of the foundation. Most undergraduates were fee-paying residents who, as non-foundationers, were not entitled to participate in governing the society. Many colleges, however, increasingly admitted undergraduates to the foundation either as probationers or as a class of junior members. Some colleges did permit the election to fellowships of advanced undergraduates, but this was generally a minimum qualification to prevent vacancies for extended periods.

Constitutional changes accompanied undergraduate admissions. As mentioned earlier, foundations were separated into classes of graduate fellows who governed the college and undergraduate scholars who were little more than academic apprentices assigned to tutors who supervised their financial and academic affairs. If scholars were deemed too immature even to pay their own bills, it is no surprise that they were considered too inexperienced to help govern the college.

Within the fellowship itself, it became increasingly commonplace to entrust the college's government and administration to a select body of officers and senior fellows. The college corporation in other words began to shrink. For our purposes,"corporate shrinkage"can be defined as the formation of a

small governing body or seniority within the membership with powers so extensive that for all practical purposes they were the coproration.

During the last half of the fifteenth and early part of the sixteenth centuries, the emergence of governing bodies typified all English corporate and quasi-corporate groups. Monasteries, mendicant orders, cathedral and collegiate chapters, merchant and craft guilds, municipalities, universities and their colleges, and the Inns of Court all underwent an internal differentiation until, by charter or practical operation, the corporation shrank from the general membership to an elite governing class.[66]

To cite an example, by the end of the fifteenth century municipal government had evolved from popular rule in the form of a general (and later a representative) assembly into a closed, self-perpetuating council whose members served for life. As a result the town council was regarded in law as the corporation, while ordinary citizens lost their rights of self-government and became a group subject to the rule of an oligarchic corporate governing body.[67]

Although college corporations did not become true oligarchies, many were organized into hierarchies of distinct and unequal classes according to the principles of aristocratic government. At the top, with absolute authority for the corporation and its members, was the external visitor named by the founder to insure that his purpose was observed.[68] Internally, the charter appointed the head as the chief governor. Together with the officers and fellows, or, typically, a select portion of the most senior fellows, the head administered the college. Beneath the governing segment was the main body of fellows. At the base of the hierarchy were the various grades of undergraduates (foundation scholars, pensioners and commoners, servitors and sizars) who had no share in corporate government even though some were integral parts of the foundation.[69]

The introduction of undergraduates was accompanied by a differentiation of the general fellowship. Founders expressed a preference for aristocratic government in their statutes by formally creating seniorities or select governing bodies of senior fellows and officers responsible for almost every facet of corporate government. The statutes of 5 of the 6 Oxford colleges and 3 of the 5 Cambridge societies founded in the sixteenth century contained such provisions.

At Oxford, only Jesus College lacked a governing board. During its first forty years the college had no statutes, very few residential members, and was governed by a series of autocratic presidents. It may well be that the society's history of autocracy, small membership, and new status as a residential college suggested to James I (under whose auspices statutes were codified in 1622) a more democratic constitution in which all the fellows participated.[70] The corporations of Emmanuel and Sidney Sussex, Cambridge each consisted of a master, ten graduate fellows, and twenty undergraduate scholars. Neither college had a governing board of seniors, perhaps because the fellowship was small, or possibly because the Puritan beliefs of their founders eschewed hierarchical government within the church and related institutions.

With these exceptions, all other sixteenth century foundations had formal governing boards. The governing arrangements at Trinity College, Cambridge, as described in the statutes of 1552 and 1560, provide a typical example.[71] According to the 1560 statutes the foundation consisted of sixty fellows and sixty-two scholars. The fellowship had two grades: major fellows (masters) and minor fellows (bachelors).

Both codes entrusted the college's government to the master and a select body of seniors known as the "senate" in 1552 and the "seniority" in 1560. The

senate contained the "superior" officers, who belonged en officio: the master, pro-president, two deans (censores), two bursars (quaestores), head lecturer, and any of the Regius professors of divinity, Greek, and Hebrew who were also fellows.

In 1560 the senate became a seniority of the master and eight most senior fellows. When a vacancy occurred, the statutes mandated the election of the next most senior major fellow not yet on the seniority. If someone was absent his place was filled temporarily by the most senior major fellow not already a member or acting as a deputy. The seniority's influence was expanded by the requirement that the vice-master and senior dean be chosen from this body.

The master of this royal college was appointed by the crown, but beyond this the governing board's authority extended to almost every other area of college life. In 1552 the master and the whole body of superior and inferior officers elected all the fellows and officers, but by 1560 this was restricted to the master and seniority. If the master opposed a candidate his veto could be overridden by unanimous vote of the eight seniors. Ambiguities in the statutes were interpreted by the master and a majority of the eight seniors. College business and estate management was left to the master and a combination of the senior and other officers. Disciplinary authority was similarly vested in the seniority. Dissensions among the fellows were settled by the master and seniors, and those involving the master by the seniority alone. Authority to elect fellows rested with the master and seniors. The master was removable only by the visitor, but he could be brought before the visitor for trial and sentence by the vice-master and five seniors. The only business in which other fellows participated was the use of the common seal, which required the con-

currence of the master (whose vote was absolutely required), the seniority, and the eight most senior fellows not on the governing board.

Clearly, the corporations of various post-Reformation English colleges shrank into minorities which, in effect if not in law, were the corporations. There emerged, in short, a small, elite class of men who governed the membership and the society's corporate life together with the master.

We have above described the pattern of government within the English colleges and universities when the American colonists, many of whom had first-hand knowledge of Oxford and Cambridge, were founding the first colleges on this side of the Atlantic. The universities were subject to royal authority. They were not officially part of the national government, yet their corporate existence and privileges depended upon legitimization by the state as set forth in formal charters from the crown. Internally, the universities were confederations of autonomous chartered colleges which had usurped the teaching function from their parent corporations, and in whose heads and governing boards lay the real power. Since it was the corporate structure of the English college that served one of the precedents for American academic government since 1745, it is fitting to discuss in our final section the nature of the English corporate form.

English Corporations

The post-medieval evolution of university and college governing structures, and the universities' relationship to the national state were fixed by the mid-seventeenth century. Concurrent to and intersecting with this evolution, the common law conception of the corporation slowly crystallized. Just

as college and university government was set by the time of the Laudian code (1636), so much of the essential nature of the modern corporation had been fashioned in law and practice. The chronology of English corporate history intermingles with the development and legal status of ecclessiastical groups, municipalities, guilds, and other free-forming voluntary associations. But of paramount interest for the purposes of this essay is the nature of the corporate entity as perceived by the common law, the relationship of this conception to the notion of corporate legitimation by sovereign authority, and the place of the corporation within the political machinery of the state.

A legal person is any subject of rights and obligations in a given legal system. Legal personality constitutes the total rights and duties of a legal person, exists only when recognized by law, and can be assigned to groups and individuals alike. Compared with a single person group legal personality is a perplexing concept. An individual is a concrete human being acting as a single legal person. The group, however, is both an intangible thing with a legal personality apart from its members, and the members themselves each with their own legal capacity. Theories of legal personality have been advanced to explain this dichotomy.

One such idea is the fiction theory of corporate personality, first stated in the nineteenth century by Friedrich Karl von Savigny in his endeavors to identify a uniquely German law through a comparative historical study of ancient Roman and teutonic sources. Savigny proceeded on the assumption that the concrete individual human being with all his physical, psychological, and metaphysical qualities was the true substratum of legal rights and duties. Once this assumption is made a potential legal person is seen in one of two ways, depending upon how it compares to the human <u>persona</u>. Either it is a

real person, in the sense that it intrinsically has the same qualities as a natural person; or, it is a fictitious person, meaning that because the potential legal subject is not a human being it can acquire the capacity for rights and obligations, and thereby approximate human personality, only by a legal fiction.[72]

Savigny was convinced that the fiction theory was implied, if not stated explicitly, in Roman and medieval canon law. The essence of the theory was an absolute separation of the legal entity or corporation per se from its human members, and a clear distinction between corporate and unincorporate groups since the latter had no legal standing as juristic persons. Because human beings alone had real existence (and consequently personality) only they had intrinsic capacity to act and acquire rights. A corporation, therefore, could engage in proprietary acts only if, through a legal fiction, it was said to approximate human personality. The corporation was a man-made or fictitious person exercising just those capacities expressly granted and was incapable of doing anything else. It was a creation unable to think, know, will, act, and commit or be punished for crimes or torts. Any act was, by definition, attributed to the members who were accountable for corporate offenses for it was ridiculous to punish something existing merely in the imagination through a fiction of law.[73]

The so-called concession theory is frequently considered a correlate of the fiction theory, differing from it in emphasis alone. Advocates of this view maintain that because the corporate legal person was an imaginary mental construct it could not exist unless created by fiat of the sovereign. Groups, in other words, lacked inherent claims for legal existence or recognition on the basis of free development; official permission was necessary to form and act as a corporation.[74]

Both the fiction and concession theories attempt to limit corporate powers, but there is no mandatory connection between them. The fiction theory is a metaphysical analysis of corporate persons, but the concession theory is unconcerned with a group's reality. Instead it asserts that corporate capacity is a derivative privilege requiring an authoritative act of permission or, in the case of corporations arising by free development, confirmation. A given legal system can therefore formulate a concession theory without postulating a doctrine of corporate fiction, and such was the case in English common law.

It is commonly held that English law developed the essentials of a fiction theory by the end of the Middle Ages. Evidence of its complete reception is usually inferred from Coke's opinion of 1613 in a case that summarized the evolving state of English corporation law to that date. According to Coke, the corporation per se is "only in abstracto." It is an invisible and immortal body that "rests only in intendment and consideration of the law."[75]

As stated above, the fundamental criteria for the fiction theory are a complete separation of the legal entity from its members and a clear distinction between corporate and unincorporate groups. On the surface it does appear that English law met the first criterion, but Coke's statement is probably nothing more than an example of how the language of one legal system influenced another.[76] Throughout the period of the common law Year Books (the reigns of Edward I through Henry VIII), the courts were unable to consistently detach the entity from its members and treated corporations and simple collectivities or masses of individuals as if they were the same.[77] Some English lawyers spoke of the corporation as if it was a fictitious person, but this was at best a minority view.[78] The anthropomorphic conception of the English corporation followed traditional medieval opinion that a cor-

poration was a mass of individuals instead of an entity or person distinct from its members.[79]

The dominant common law conception of the corporation was described in the Abbot of Hulme's Case in 1482. The corporation was a unified tripartite body politic of mayor, sheriffs, and commonalty. Each part corresponded to a part of the official name under which all business was conducted. A name gave the group certainty and indicated in whom the group's rights were vested. It had such importance that we can say corporateness consisted in the name, and if the name was changed a new corporation was raised. The corporation reflected the political realities of English town life. There was one group of human beings that for certain purposes was a tripartite community or body politic living under a borough constitution, but, for the purposes of law, was incorporated as a tripartite structure to undertake functions otherwise impossible. The corporation then was simply the strictly legal aspect (the name and capacity) of the political community of real men or body politic, and its chief characteristic was capacity or function rather than person or entity.[80]

Although common law avoided the fiction theory, it nevertheless developed a doctrine of concession. The modern concession theory is a product of the centralized national state of the sixteenth and seventeenth centuries and its objection to imperia in imperio which exercised powers belonging to the sovereign. It was therefore established that none but the king can create a corporation, whether by royal charter (letters patent granting royal franchises, estates in land, or chattel interest), prescription (which presupposes a royal charter), or act of parliament.[81] To assure that the royal prerogative suffered no loss, the courts enforced the rule that unlicensed corporations could lose their privileges and legal existence.[82]

Prior to the fifteenth century English law did not stipulate that corporations must be created by authoritative act. Indeed, lawyers were only just beginning to arrive at a consistent idea of technical incorporation and a cogent doctrine of corporations. Thirteenth-century royal charters, for example, were unconcerned with incorporation. Their sole purpose was to award franchises or privileges, and confirm previous grants and those powers exercised by custom.[83] It was formerly believed that municipal charters of incorporation were first granted during the reign of Henry VI (1442-61).[84] By the middle of the fourteenth century, however, charters began to use communitas (community) in the abstract technical sense of incorporation, although this appellation was also applied to unincorporated landed communities. Nevertheless, it is from this expression that the idea of formal incorporation arose. The principal difference between fourteenth- and fifteenth-century charters was the complexity of the incorporation formula: the former confirmed a communitas that developed by natural evolution while the latter typically granted a new corpus corporatum et politicum, but essentially the same privileges were included.[85]

The older borough corporations were not created by charter. Rather, a de facto corporate unity and organization emerged through the exercise of royal jurisdictional, economic, and governmental franchises which, taken together, set boroughs apart from other secular landed communities.[86] It was these same franchises that ultimately led to the concession theory.

By feudal law the king was lord paramount and the source of all landed interests and political and economic capacities in the kingdom. It was therefore within his prerogative to grant to his subjects such rights as he saw fit. Franchises, in other words, were coordinated with property as some-

thing to be granted by royal consent.[87] The king's exclusive right to grant or withhold franchises was fully established in the thirteenth century. Because franchises were being excercised without valid titles, parliament issued statutes in 1278 and 1289-90 empowering royal judges to inquire by what warrant (quo warranto) a franchise was held. Those claiming possession and uninterrupted enjoyment of a franchise granted before the reign of Richard I (1189-99) were enjoined to appear at an inquest and prove, by some record of its existence, they had a title stronger than the king or forfeit the franchise.[88] The implication of these acts was clear: groups became increasingly dependent upon the crown for confirmation of old charters and grants of new franchises.

Groups did not need charters of creation in the thirteenth century but the idea was slowly emerging. In need of revenue and guided by political expedience rather than some rule of law, the king began to interfere with the creation of new groups. The idea seems to have been that associations requiring oaths of allegiance and adulterine or unlicensed craft guilds could not exist unless this franchise was purchased from the king.[89] By the fourteenth century there was increasing recognition that certain communitates, especially towns, required an act of creation or confirmation. For example, in 1313-14 the city of Canterbury was reminded that "a city cannot be a city unless it was originally constituted one by grant of the king."[90]

The necessity for royal creation became a definitive rule by the middle of the fifteenth century, about the same time lawyers began to distinguish the corporate from the unincorporated group by the title corpus corporatum et politicum and to fully elaborate a common law corporation doctrine. Thus Keble stated, "corporation is a thing which must be made by the king

himself . . . his words and none other make the corporation."[91] Henceforth, new corporations must be established by royal charter. But many older secular communities already achieved a de facto corporateness, and for them the rule meant that continuation depended upon legal confirmation of their status, although the language of the charter made it sound as if a new corporation was created.[92]

To account for the existence of self-generating corporations and to extend royal authority over them, lawyers formulated the idea of prescriptive corporations. These were corporations of such antiquity that their charters (when they could not be produced) were assumed to be lost or accidentally destroyed. The king accepted this pretext because it presumed an original grant and therefore preserved his right to create corporations. To qualify as a prescriptive corporation, a group had to show it exercised corporate capacity beyond man's memory, just as someone claiming any franchise or right by prescription had to demonstrate uninterrupted possession and enjoyment of the thing in question for time immemorial.[93]

Seen in this light, corporateness was itself a royal franchise. In the strictest technical sense, corporations and franchises differ. Thus the first work devoted exclusively to English corporations contrasted corporations and franchises. The former was "a capacity . . . to be a person capable of having and holding what may be granted to it," the latter a separate estate of inheritance capable of being granted and conveyed.[94] Here the corporation was something to which a franchise belonged rather than a franchise itself. Yet, broadly defined, a franchise is any political capacity or right exercised by free men. We have already seen that common law defined corporateness as a capacity or function--a royal privilege permitting

the group to act in certain ways. The law even permitted the king to confer corporateness for only one purpose: to take or hold a manor, obtain an exemption from tolls, pay the king's fee-farm rent, elect a mayor, and the like.[95] If the king can permit a community to function as a corporation in just one capacity, the corporation cannot be a clearly defined person or entity with a precise number of requisite attributes. Incorporation, in short, was the capacity to function in certain ways as an organized group. In this sense, the corporation was a royal franchise granted or denied at the king's pleasure since all capacities and rights flowed from the crown.[96]

The crown's right to create and regulate corporations was most vigorously asserted during periods of general hostility toward corporations, whether because their closed constitutions and commercial monopolies suggested conspiracy, or because it was believed their corporate rights diminished the powers belonging to the state or king, whose personified office represented the state.[97] In 1437, for example, parliament attempted to remedy an abuse whereby craft and trade corporations "made among themselves many unlawful & unreasonable ordinances as well in prices of wares as other things" for their own "singular profit & to the common hurt & damage of the people." To prevent "ordinances in disinheritance or diminution of the prerogative of the king" and "against the common profit of the people," it was therefore enacted that (under pain of forfeiting corporate charters and privileges) the ordinances of such bodies must first be approved by the justices of the peace or municipal officers. In 1504 the act was renewed, only this time such corporate ordinances required the prior consent of the chancellor and treasurer of England, the chief justices of King's Bench and Common Bench (or any three of them), or the itinerant justices of the assize.[98]

Under the Stuarts, the concession theory was taken to its extreme in an attempt to bring all corporations under royal control and terminate once and for all the spontaneous origin of these groups. To accomplish this the Stuart monarchs and their apologists argued that the king had a singular right to create, regulate, and dissolve corporations as well as to alter their rights by royal fiat. One of the staunchest defenders of this idea was Robert Brady, household physician to Charles II and James II, and keeper of the records in the tower of London. Brady (in 1690) published a history of the origin of borough corporations and the source of their privileges. Boroughs and their liberties, he stated, exist only by royal bounty and grant. To allege immemorial custom and prescription as the basis for corporate rights is a contempt of the crown and a criminal usurpation of the king's prerogative, punishable by seizing all privileges into the king's hands by way of forfeiture.[99] However distorted these arguments, they accomplished their purpose and the concession theory of creating corporations held its ground.

The Tudor age is a watershed period in the history of English corporations. During the Middle Ages the corporate form served as a means for voluntary associations of all sorts to better conduct their affairs, and for the church and state to control these groups. While this remained true in the sixteenth and seventeenth centuries, the corporation acquired a new use; namely, the prosecution of royal policy and extension of the royal prerogative.

The Tudor-Stuart manipulation of the borough system is illustrative. Since boroughs sent representatives to parliament, both royal houses claimed the right to create and dissolve boroughs, as well as to reconstruct their charters in order to encourage the return of loyalists and off-set the growing

independence of the Commons. Accordingly, Edward VI created seven new boroughs in Wales alone; Mary incorporated ten new boroughs and revived four, and Elizabeth chartered twenty-five new ones while reviving six. To promote the success of this plan, the electoral process was revised to raise a borough aristocracy and discourage popular elections. In 1598 royal judges (upon the urging of Elizabeth's privy council) ruled that if there was a usage to this effect, a corporate by-law could limit to a select body the right of electing principal corporators even though the charter vested this right in the entire membership. In 1615, James I's judges determined that the king could incorporate municipalities in the form of a select body and reserve to it the right to elect parliamentary representatives.[100]

Royal control of corporations to a large degree grew out of the crown's prerogative to govern trade and commerce. Ever since the fourteenth century royalty granted English merchants privileges enabling them to organize foreign trade. The awakened commercialism fostered by the discovery of the New World, the beginning of exploration, and the search for the Northwest Passage led to the incorporation of companies of adventurers in the sixteenth century that were granted monopolies to exploit the trade and colonize their respective territories. All this was done by acts of special grace, implying the operation of the royal prerogative.[101]

These companies (examples of which included the Merchant Adventurers Company, the East India Company, and the Company of the Massachusetts Bay in New England) assumed the organizational structure of their corporate predecessors: ecclesiastical bodies, boroughs, eleemosynary groups, and guilds. Charters of incorporation therefore included authority sufficient to regulate the company's affairs; i.e., powers of self-government to exercise the

initiative so essential for success in an operation remote from the center of political government in London. At the same time, the company's dependence upon a royal charter kept it accessible to the requirements of national policy and control. In the process, precedents were set both for future organizations formed strictly for private business interests, and for the development in the American colonies of governmental forms able to control local affairs in relative autonomy from English rule.[102]

The corporation was more than a convenient form of business organization. It was an instrument of royal policy; a governmental subdivision empowered to regulate and govern a trade through its monopoly. As one anonymous author put it:

> The general intent and end of all civil incorporations is for better government, either general or special. The corporations for general government are those of cities and towns . . . Special government is so called because it is remitted to the managers of particular things, as trade, charity, and the like, for government, whereof several companies and corporations for trade were erected.[103]

Royalty, then, incorporated companies to serve various ends: the nation's territory was expanded, commercial policies were promoted, foreign trade was regulated, the political government of the realm was improved, the king obtained needed funds in return for the charter, and the public welfare benefitted.[104]

By the early part of the seventeenth century the common law had taken sufficient notice of the corporation for Sir Edward Coke to discuss the incident rights of corporate status, rights which the law automatically assigned even if they were omitted in the charter raising the corporation.

The creation of corporations was reserved to the king. Incorporation conferred upon a group of persons with a mutual interest the ability to implement this interest in perpetual succession by electing new numbers. Corporations had the right to sue or be sued, receive and hold property, have a common seal, and enact statutes and by-laws to govern its members.[105]

The transfer of the corporate form to the American colonies carried with it these incidents of corporate life, although the (relatively) more democratic sentiments of the colonists soon eroded the idea that royal consent was needed to form a corporation. In this country it was considered generally that any association seeking to carry out a socially accepted purpose had an inherent right to incorporation.[106]

Thus, the precedents were established which proved influences for the government of the early colleges in this country, and in time for the character of higher education which followed. The colleges were conceived of as performing a function important for the public good and, therefore, legitimized by the government. Yet, they were constituted not as a part of government but, in the English tradition, as separate entities. The corporate form, in turn, served as the mechanism by means of which the authority to manage the affairs of these institutions was delegated to external governing boards of lay trustees. Two results followed. One was the concept of education as an activity separate from government, yet responsible to it, as representative of the people and certainly subject, in the initial years, to intrusions in internal affairs on the part of colonial and state governments. Out of this situation grew a balance between institutional autonomy and public accountability which has characterized American higher education in this

century. The second was a precedent for the corporate responsibility of governing boards composed of individuals serving as private citizens, a legal arrangement which acquired sufficient strength by tradition to be adopted for the public colleges which expanded so dramatically in numbers and size after the Civil War.

FOOTNOTES

1. For the emerging distinction between public and private higher education see John S. Whitehead, The Separation of College and State (New Haven, 1973); and Jurgen Herbst, "From Religion to Politics: Debates and Confrontations over American College Governance in the Mid-Eighteenth Century," Harvard Educational Review 46(1976):397-424, and "The Eighteenth Century Origins of the Split Between Public and Private Higher Education in the United States," History of Education Quarterly 15(1975):273-80.

2. Hastings Rashdall, The Universities of Europe in the Middle Ages, new ed. by F.M. Powicke and A.B. Emden, 3 vols. (Oxford, 1936), 1: 211-12, 2: 17-20, 59-60; Alan Karp, "Calvinism and Higher Education in Geneva, 1536-1700," New York, 1970 (typewritten), pp. 75-100; and William Hamilton, "On the Patronage and Superintendence of Universities," Discussions on Philosophy and Literature, Education and University Reform, 3d ed. (Edinburgh, 1866), pp. 358-96.

3. Gaines Post, "Parisian Masters as a Corporation, 1200-1246," Speculum 9(1934):421-45.

4. John E. Kirkpatrick, "The British College in the American Colonies," School and Society 17(1923):449, and The American College and Its Rulers (New York, 1926), p. 299; Samuel K. Wilson, "The Genesis of American College Government," Thought 1(1926):415-33; and Samuel Eliot Morison, The Founding of Harvard College (Cambridge, Mass., 1936), pp. 127, 140.

5. Edward H. Reisner, "The Origin of Lay University Boards of Control in the United States," Columbia University Quarterly 23(1931):63-69; James B. Conant, "Academical Patronage and Superintendence," Harvard Educational Review 8(1938):312-34; and W.H. Cowley, "Professors, Presidents, and Trustees: An Assessment of the Conceptual Roots of American Academic Government," Stanford, Calif., 1961 (duplicated), chap. 2.

6. Jurgen Herbst, "The First Three American Colleges: Schools of the Reformation," Perspectives in American History 8(1974):7-52.

7. Franklin B. Dexter, ed., Documentary History of Yale under the Original Charter of the Collegiate School of Connecticut, 1701-1745 (New Haven, 1916), pp. 20-23; and Edward C. Elliott and M.M. Chambers, eds., Charters and Basic Laws of American Universities and Colleges (New York, 1934), pp. 588-93, 420-30.

8. George P. Schmidt, Princeton and Rutgers: The Two Colonial Colleges of New Jersey (Princeton, 1964), p. 9. In contrast our first two colleges evolved different arrangements. For the initial fourteen years of its existence Harvard was governed by an unincorporated trust -- first a committee of six magistrates and six clergymen; then, after 1642, a permanent twenty-one-member board of Overseers comprising the governor, deputy governor, nine assistants of the Massachusetts Assembly, the college president, and nine teaching elders of towns adjacent to Cambridge. The Overseers were a self-perpetuating body serving as legislature, executive, and judiciary for the fledgling college. The trust stage ended in 1650 when the General Court established an internal governing corporation of the president, treasurer, and five fellows. The corporation, however, needed the Overseers' consent to coopt subsequent members, enact by-laws, resolve disputes, and buy or sell property. Finally, in 1657, the General Court ruled that the corporation

could issue by-laws without the Overseers' consent, but permitted such acts to be altered by that body to whom the corporation was responsible in all matters. Elliott and Chambers, eds., Charters and Basic Laws, pp. 208-12. A trust was also the initial legal form for William and Mary. James Blair secured a charter in 1693 appointing eighteen Virginia gentlemen and clerics, and their successors, as trustees, visitors, and governors. To this unincorporated, self-perpetuating trust the charter awarded the authority to found and stabilize the college, hold and manage its endowment, frame statutes, and elect the chancellor, president, and masters or professors. The charter further directed the trustees to convey the college property to an internal corporation of the president and six professors once the college and corporation were fully established. This was finally accomplished in 1729, the governors retaining the rights of filling corporate vacancies, legislation, and visitorial power to decide weighty matters, while assigning to the corporation the endowment and the routine daily administration of the college. Edgar W. Knight, ed., A Documentary History of Education in the South before 1860, 5 vols. (Chapel Hill, 1949-53), 1:400-439, 500-528; John S. Brubacher and Willis Rudy, Higher Education in Transition: A History of American Colleges and Universities, 1636-1968, rev. and enl. (New York, 1968), p. 26: and Herbert B. Adams, The College of William and Mary (Washington, 1887), pp. 18-19. Thus, both colleges were governed by an internal academic corporation and an external visitorial body.

9. Samuel Eliot Morison, Harvard College in the Seventeenth Century, 2 vols. (Cambridge, Mass., 1936), 1:141-47, and Founding of Harvard, pp. 5, 25-26, 40, 47, 127, 137; and Frederick Rudolph, The American College and University: A History (New York, 1962), pp. 24-27.

10. For examples see J.R.L. Highfield, ed., The Early Rolls of Merton College, Oxford (Oxford, 1964), p. 70; Edward Miller, Portrait of a College: A History of Saint John the Evangelist, Cambridge (Cambridge, England, 1961), chap. 1; R.F. Scott, "Notes from the /St. John's/ College Records," Eagle 27 (1905):4-12; and Documents Relating to the University and Colleges of Cambridge, 3 vols. (London, 1852), 3:230-44 (hereafter cited as CD).

11. H.E. Salter, ed., Mediaeval Archives of the University of Oxford, 2 vols. (Oxford, 1920), 1:310; M.B. Hackett, The Original Statutes of Cambridge University (Cambridge, England, 1970), p. 48 and nn. 1,3: and Calendar of. . . Papal Letters A.D. 1198-1471, eds. W.H. Bliss, C. Johnson, and J.R. Twemlow, 12 vols. (London, 1893-1903), 1:126, 142 (hereafter cited as CPL).

12. H.E. Salter, ed., Registrum cancellarii Oxoniensis 1434-1469, 2 vols. (Oxford, 1932), 1: xviii-xix; Strickland Gibson, ed., Statuta antiqua Universitatis Oxoniensis (Oxford, 1931), pp. 81-83, 112, 130-31, 204-7 (hereafter cited as SAUO); "The Constitutions of the University of Cambridge," in Hackett, Original Statutes, chaps. 1-2, 7, 10-11, pp. 196, 198, 204, 208-12 (hereafter cited as CC); and James Bass Mullinger, The University of Cambridge, 3 vols. (Cambridge, England, 1873-1911), 1:141.

13. CC, chap. 1, p. 196; and Rashdall, Universities of Europe, 3:45-46.

14. For accounts of Oxford's early difficulties with the bishop of Lincoln see Rashdall, Universities of Europe, 3:115-20; and R.M.T. Hill, "Oliver Sutton, Bishop of Lincoln, and the University of Oxford," Transactions of the Royal Historical Society, 4th ser., 31 (1949): 1-16. Evidence of Cambridge's positive relationship with Ely can be found in CC, chap. 13, p. 216; and Hackett, Original Statutes, pp. 33, n. 2, 39, 131, n. 1, 223-224.

15. H.E. Salter, ed., Snappe's Formulary and Other Records (Oxford, 1924), pp. 85-87, 144-46; CPL, 4: 66, 83; 5: 370-71; and 8: 484-85; Rashdall, Universities of Europe, 3: 137; James Heywood, comp., Early Cambridge University and College Statutes in the English Language, 2 vols. (London, 1855), 1: 181-211.

16. Salter, ed., Snappe's Formulary, pp. 270-73, and Mediaeval Archives, 1: 222, 226-30; Rashdall, Universities of Europe, 3: 79-113; Matthew Bacon, A New Abridgement of the Law, 10 vols. (Philadelphia, 1876), 10: 102; and Charles Henry Cooper, Annals of Cambridge, 4 vols. (Cambridge, England, 1842-1908), 1: 75-76, 103, 104, 127-28, 161, and "On the Earlier High Stewards of the University of Cambridge," Cambridge Antiquarian Communications 1 (1857): 273-80. For a discussion of the Cambridge chancellor's court and jurisdiction also see The King v. the Chancellor, Masters, and Scholars of the University of Cambridge, 1 Stra. 558 (K.B. 1723).

17. H.E. Salter, Medieval Oxford (Oxford, 1936), pp. 110-12.

18. Salter, ed., Snappe's Formulary, pp. 144-46, 153-55, 178; Rashdall, Universities of Europe, 3: 129, 131-32, 136; and A.B. Emden, An Oxford Hall in Medieval Times (Oxford, 1927), p. 125.

19. Salter, ed., Snappe's Formulary, pp. 155-56, 158-61, 166-67, 175, 179; and Lionel Lancelot Shadwell, ed., Enactments in Parliament Specially Concerning the Universities of Oxford and Cambridge, 4 vols. (Oxford, 1922), 1: 7-13.

20. CPL, 6: 303; J.R.L. Highfield, "The English Hierarchy in the Reign of Edward III," Transactions of the Royal Historical Society, 5th ser., 6 (1956): 126-27; and Guy Fitch Lytle, "Patronage Patterns and Oxford Colleges c. 1300-c. 1530," in The University in Society, ed. Lawrence Stone, 2 vols. (Princeton, 1974), 1: 134.

21. Lytle, "Patronage Patterns," pp. 111-49.

22. What follows is based on the lists of chancellors provided by Strickland Gibson, "The University of Oxford," in L.F. Salzman, ed., The Victoria History of the County of Oxford, 3 vols. (London, 1907-69), vol. 3: The University of Oxford, eds., H.E. Salter and Mary D. Lobel, pp. 38-39 (hereafter cited as VCH, Oxs.); J.P.C. Roach, "The University of Cambridge," in L.F. Salzman, ed., The Victoria History of the County of Cambridgeshire and the Isle of Ely, 5 vols. (London, 1938-73), vol. 3: The City and University of Cambridge, ed. J.P.C. Roach, p. 331; The Historical Register of the University of Oxford (Oxford, 1900), pp. 16-20; and J.R. Tanner, ed., The Historical Register of the University of Cambridge (Cambridge, England, 1917), p. 15. For biographical data see A.B. Emden, A Biographical Register of the University of Oxford to A.D. 1500, 3 vols. (Oxford, 1957-59), and A Biographical Register of the University of Cambridge to 1500 (Cambridge, England, 1963).

23. This should not be interpreted to mean the universities elected laymen during this period. Thomas Cromwell, Cambridge's first lay chancellor, was elected in 1535, while Oxford's first was Sir John Mason, elected in 1552. Roach, "Cambridge," p. 332; and Gibson, "Oxford," p. 39.

24. Henry Anstey, ed., Epistolae Academicae Oxon, 2 vols. (Oxford, 1898),

2: 623, 625-30. The election of a non-resident chancellor necessitated the appointment of a deputy to govern the university, during his absence, as acting head. By the sixteenth century it evolved into a permanent office elected by the masters to a set term.

25. W.G. Searle, The History of the Queens' College of St. Margaret and St. Bernard in the University of Cambridge, 1446-1622, 2 vols. (Cambridge, England, 1867-71), 1: 124; Anstey, ed., Epistolae Academicae Oxon, 1: 334-36, 2: 465, 507, 603, 614, 631-32, 665-69; and Cooper, Annals of Cambridge, 1: 213-14.

26. Anstey, ed., Epistolae Academicae Oxon, 2: 513, 618-20, 622-25.

27. E.F. Churchill, "The Dispensing Power of the Crown in Ecclesiastical Affairs," Law Quarterly Review 38(1922): 302-303.

28. Cooper, Annals of Cambridge, 2: 368-69.

29. An Act for the Restraint of Appeals, 1533, 24 Hen. 8, ch. 12; An Act for the Submission of the Clergy to the King's Majesty, 1534, 25 Hen. 8, ch. 19; An Act for the Exoneration from Exactions Paid to the See of Rome, 1534, 25 Hen. 8, ch. 21; and An Act Concerning the King's Highness to be Supreme Head of the Church of England, 1534, 26 Hen. 8, ch. 1, The Statutes of the Realm, eds. Alexander Luders et al., 9 vols. in 10 (London, 1810-22), 3, pt. 1: 427-29, 460-61, 464-71, 492.

30. Cooper, Annals of Cambridge, 1: 375-76.

31. James Heywood, comp., Collection of Statutes for the University and Colleges of Cambridge (London, 1840), pp. 1-43; An Act for the Incorporation of both the Universities, 1571, 13 Eliz. 1, ch. 29, Statutes of the Realm, 4, pt. 1: 585-86; and John Griffiths, ed., The Statutes of the University of Oxford Codified in 1636, (Oxford, 1888).

32. SAUO, pp. 208, 226-27, 224, 210-11; Hackett, Original Statutes; pp. 292, 295; and CD, 1, statutes 18-19, 25: 316-17, 321.

33. Emden, Oxford Hall, pp. 36, 193, 195-96. One section of Oxford's Aularian Statutes of 1483-90 covers academic studies and the procedure then governing undergraduate instruction in the halls. SAUO, pp. 574-88. On the general question of using the halls for academic purposes see W.A. Pantin, "The Halls and Schools of Medieval Oxford," in Oxford Studies Presented to Daniel Callus, eds. R.W. Southern et al. (Oxford, 1964), pp. 83-84.

34. Henry Anstey, ed., Munimenta Academica, 2 vols. (London, 1868), 1: xlviii-xlix; Salter, ed., Registrum cancellarii Oxoniensis, 1: 102, 2: 321, 357; Pantin, "Halls and Schools," pp. 34-35; H.P. Stokes, The Mediaeval Hostels of the University of Cambridge (Cambridge, England, 1924), chap. 14; Roach, "Cambridge," p. 161; and Robert Willis and John W. Clark, eds., Architectural History of Cambridge, 3 vols. (Cambridge, England, 1886), 1: xxii-xxiii.

35. Charles Edward Mallet, A History of the University of Oxford, 3 vols. (London, 1924), 2: 21-22; Emden, Oxford Hall, p. 260; Willis and Clark, eds., Architectural History, 1: xxiii; and Lawrence Stone, "The Size and Composition of the Oxford Student Body, 1580-1910," in The University in Society, ed. Stone, 1: 33-35.

36. H.W. Carless Davis, Balliol College (London, 1899), pp. 13, 21; Rashdall, Universities of Europe, 3: 182, n. 1; and Walter de Stapeldon, The Register of Walter de Stapeldon, ed. F.C. Hingeston-Randolph (London, 1892), pp. 304, 307.

37. Rashdall, Universities of Europe, 3: 213, 215; A.H.M. Jones, "New College," VCH, Oxs., 3: 154; A.B. Emden, "Learning and Education," in Medieval England, ed. Austin Lane Poole, new. ed., 2 vols. (Oxford, 1958), 2: 536; and G.R. Potter, "Education in the Fourteenth and Fifteenth Centuries," in The Cambridge Medieval History, eds. H.M. Gwatkin and J.P. Whitney, 9 vols. (New York, 1926-36), 8: 536.

38. Alan B. Cobban, The King's Hall within the University of Cambridge in the Later Middle Ages (Cambridge, England, 1969), pp. 9-10, 19-22, 54-65, 151-52.

39. Statutes of the Colleges of Oxford, 3 vols. (London, 1853), 1 (New College), rubrics 2, 3, 7, 28: 5-12, 16-17, 54 (hereafter cited as SCO).

40. H. Rackham, ed. and trans., Early Statutes of Christ's College, Cambridge with the Statutes of the Prior Foundation of God's House (Cambridge, England, 1927), pp. 19, 23, 25, 27; James Heywood and Thomas Wright, eds., The Ancient Laws of the Fifteenth Century for King's College, Cambridge (London, 1850), pp. 18-29, 35-36, 40, 84-87; Mullinger, Cambridge, 1: 316 and R.G.D. Laffan, "Queen's College," VCH, Cambs., 3: 411.

41. SCO, 2 (Magdalen College): 15-18.

42. For an example see Robert Masters, The History of the College of Corpus Christi and the Blessed Virgin Mary, 2 pts. in 1 vol. (Cambridge, England, 1753), pt. 1, pp. 45-46, 54, 199-200.

43. For examples see SCO, 1 (Oriel College): 8, and 1 (New College) rubric 21: 43; and CD, 2: 27, 136-37 for similar policies at Cambridge's Peterhouse and Clare Hall.

44. Cobban, King's Hall, pp. 49-50; and William Carr, University College (London, 1902), p. 49.

45. Cobban, King's Hall, pp. 67-68, 71; and SCO, 2 (Magdalen College): 60.

46. Examples will be found in SCO, 3 (St. John's College) chaps. 34, 40: 75-76, 83: H.E.D. Blakiston, Trinity College (London, 1898), pp. 63-64; and CD, 3: 84, 351, 520-21. Various grades existed within the general class of commoner or pensioner, depending upon one's boarding plan. See John Venn, Biographical History of Gonville and Caius College, 1349-1897, 4 vols. (Cambridge, England, 1897-1912), 3: 272-73.

47. Rudolph, Sohm, The Institutes; A Text-Book of the History and System of Roman Private Law, trans. James Crawford Ledlie, 2nd ed. (Oxford, 1901), pp. 215-16, 509-10; and H.F. Jolowicz, Historical Introduction to the Study of Roman Law (Cambridge, England, 1939), pp. 120-22, 249-52.

48. See Mark. H. Curtis, Oxford and Cambridge for Transition (Oxford, 1959), pp. 78-81, 96-100, 107-16, 118-48; and Harris Francis Fletcher, The Intellectual

Development of John Milton, 2 vols. (Urbana, Ill., 1956-61), 2: 71-76. Curtis should be read in conjunction with criticisms of his view by William T. Costello, The Scholastic Curriculum at Early Seventeenth Century Cambridge (Cambridge, Mass., 1958), chaps. 1-3; Christopher Hill, Intellectual Origins of the English Revolution (Oxford, 1965), pp. 307-8; Hugh Kearney, Scholars and Gentlemen (Ithaca, N.Y., 1970), pp. 103-4; and Kenneth Charlton, Education in Renaissance England (London, 1965), pp. 147-48, 150-54.

49. SCO, 1 (Merton College, 1270): 12; and CD (1344), 2: 12.

50. SCO, 1 (New College) rubric 28: 54.

51. Ibid., 2 (Magdalen College): 60, 66, 76-77, 78, 127.

52. Heywood and Wright, eds., Ancient Laws, pp. 89-91, 98-99.

53. Hastings Rashdall and Robert S. Rait, New College (London, 1901). p. 49; and Rashdall, Universities of Europe, 3: 234.

54. Cobban, King's Hall, pp. 67-71. The term "tutor" first appeared in the 1551 statutes of Clare Hall, Cambridge and the 1552 code of Brasenose, Oxford. CD, 2: 164; and SCO, 2 (Brasenose College) chap. 8: 12. The usual Oxford terminology for a student under a tutor's care was scholaris or discipulus. The only Oxford college statutes using "pupil" before 1600 were those given to Cardinal College ca. 1527 by Thomas Wolsey. SCO, 2 (Corpus Christi College) chap. 37: 83-84, and 2 (Cardinal College): 100. From the fifteenth through early seventeenth centuries, "pupil" was used almost exclusively at Cambridge to identify a student under a tutor's government. It is therefore probable that the English academic concept of a pupil originated at Cambridge during the 1430s and that King's Hall is responsible for its currency. Cobban, King's Hall, pp. 72-75.

55. Mullinger, Cambridge, 1: 459; Rackham, ed., and trans., Early Statutes, pp. 29, 31: and A.H. Lloyd, The Early History of Christ's College, Cambridge (Cambridge, England, 1934), pp. 131, 133-37, 375-77.

56. Cobban, King's Hall, pp. 79-80.

57. CD, 3: 165; Lloyd, Early History, pp. 361-72, at p. 365, 366, 375; and Rackham, ed. and trans., Early Statutes, pp. 25, 27, 29, 99, 101.

58. Lloyd, Early History, p. 375.

59. Heywood and Wright, eds., Ancient Laws, pp. 89-91; R.G.D. Laffan, "Queens' College," VCH, Cambs., 3: 412; and Cobban, King's Hall, pp. 77-79, 82.

60. SCO, 2 (Magdalen College): 47-48, 76.

61. G.R. M. Ward, trans., The Foundation Statutes of Bishop Fox for Corpus Christi College (London, 1843), chap. 22, pp. 98-101. Wolsey established six public and five private lectureships in his college. SCO, 2 (Cardinal College): 48-54, 71-72, 133-38, 177-78. Also see W.H.S. Jones, A History of St. Catherine's College Once Called Catherine Hall, Cambridge (Cambridge, England, 1936), p. 59; James Stanley, The Earliest Statutes of Jesus College, Cambridge, ed. Arthur Gray (Cambridge, England, 1935), p. 39; and Bernard W. Henderson, Merton College (London, 1899), pp. 78, 80-82. For the royal injunctions see Cooper, Annals, 1: 375-76.

62. John Strype, The Life and Acts of Matthew Parker, 3 vols. (Oxford, 1821), 3: 111-12; and William Hamilton, "On the State of the English Universities, with More Especial Reference to Oxford," Discussions, pp. 386, 387.

63. The movement is discussed in Curtis, Oxford and Cambridge, pp. 101-2.

64. SAUO, pp. 300-310; Cambridge University, Trusts, Statutes, and Directions Affecting the Professorships, Scholarships, and Prizes and Other Endowments of the University (Cambridge, England, 1857), pp. 187-95; St. John's College, Statutes for the College of St. John the Evangelist in the University of Cambridge (Cambridge, England, 1885), pp. 124-26; and Henderson, Merton College, pp. 80-81.

65. An Act Concerning the Exoneration of Oxford and Cambridge from Payment of their First Fruits and Tenths, 1536, 27 Hen. 8 ch. 42, s.4, Statutes of the Realm, 3, pt. 2: 600; Shadwell, ed., Enactments in Parliament, 1: 115, n. 1; Mallet, Oxford, 2: 71; and Mullinger, Cambridge, 2: 52-54. The foundation charters for the Regius professorships have not survived. The date is derived from the letter patent appointing Thomas Wakefield to the Cambridge Hebrew chair. Joan Simon, Education and Society in Tudor England (Cambridge, England, 1967), p. 207, n. 1.

66. John P. Davis, Corporations, 2 vols. (New York, 1905), 1: 69-71, 77-78, 108-14, 156-58, 177-84, 187, 2: 26-27, 41-42.

67. For examples see Charles Gross, The Gild Merchant, 2 vols. (Oxford, 1890), 1: 110; Thomas Erskine May, The Constitutional History of England, ed. and contd. Francis Holland, 3 vols. (London. 1912), 1: 309-10; and George Poulson, Beverlac, 2 vols. (London, 1829), 1: 253-55.

68. As Lord Camden (chancellor of England 1766-70) said of the visitor's jurisdiction: "It is, in its nature, very peculiar. It is a despotism uncontrolled, and without appeal; the only one of its kind which is known in this kingdom. . . there is no restraint upon the visitor, but his own character." Cited by John, Lord Campbell, The Lives of the Chancellors and Keepers of the Great Seal of England, from the Earliest Times til the Reign of King George IV, 3d ed., 7 vols. (London, 1843-50), 5: 360.

69. For an example of this kind of organization see the 1509 charter of St. John's, Cambridge in CD, 3: 221-29.

70. E.G. Hardy, Jesus College (London, 1899), pp. 28-31, 35-37.

71. What follows is based on an analysis of these two codes. See Mullinger, Cambridge, 2: 582-604; and CD, 3: 418-68.

72. George Whitecross Paton, A Text-Book of Jurisprudence, ed. David P. Derham, 3d ed. (Oxford, 1964), pp. 350, 367-68; and Alexander Nekam, The Personality Conception of the Legal Entity (Cambridge, Mass., 1938), pp. 46-48. Theories rooted in such assumptions cannot be corroborated empirically because there is nothing in the concept of a legal subject that necessarily connects it with human personality. Historically, legal personality was denied to some human beings (for example, to slaves, foreigners, and minors under Roman law and to monks under English common law), yet awarded to such

non-human subjects as groups, spirits, idols, purposes, and animals. Thus anything a community chooses to so regard can become the subject of rights and duties and it is entirely immaterial whether that thing really exists or has human qualities. Nevertheless, the word "person" has come to mean the subject of rights and duties, and jurists have acknowledged a thing's legal personality only when it had the same capacities given in law to a human being as a consequence of his own personality. William C. Morey, Outlines of Roman Law, 8th ed. (New York, 1894), pp. 230-31; C.T. Carr, The General Principals of the Law of Corporations (Cambridge, England, 1905), p. 161; Frederic Pollock and Frederic William Maitland, The History of English Law before the Time of Edward I, 2d ed., 2 vols. (Cambridge, England, 1911), 1: 499; and Nekam, Personality Conception., pp. 26, 31-33, 66-68, 70, 95.

73. Frederic Hallis, Corporate Personality (London, 1930), pp. 4-9; and J. Walter Jones, Historical Introduction to the Theory of Law, 2d ed. (Oxford, 1956), pp. 164-86.

74. Otto von Gierke, Political Theories of the Middle Age, trans. with an Introduction by Frederic William Maitland (Boston, 1957), translator's Introduction, pp. xx, xxx; Sigmund Timberg, "Corporate Fictions," Columbia Law Review 46 (1946): 540, and n. 35; and Harry G. Henn, Handbook of the Law of Corporations and Other Business Enterprises, 2d ed. (St. Paul, 1970), p. 14.

75. W[illiam] S. Holdsworth, A History of Engish Law, 16 vols. (London, 1903-66), 3: 363-64, 367-70; Pollock and Maitland, History of English Law, 1: 489-93; Gierke, Political Theories, translator's Introduction, p. xiv; Carr, Law of Corporations, pp. 1-2, 6-7, 158-59; and The Case of Sutton's Hospital, 10 Co. Rep. 32 b (K.B. 1613).

76. P.W. Duff points out that Coke's statement that the corporation "rests only in intendment and consideration of the law" is probably a mistranslation or misunderstanding of Pope Innocent IV's description of the corporation. Personality in Roman Private Law (London, 1938), pp. 223-24. Innocent called the universitas or corporation a nomen iuris. Partisans of the fiction theory translate this as "a name created by law," but the pope intended a different meaning. By deduction from the Roman expression corpus habere (to have corporateness), universitas is something the group has; i.e., corporateness, the name of a legal right or privilege observable by practical reasoning. T. Eschmann, "Studies on the Notion of Society in St. Thomas Aquinas. I: St. Thomas and the Decretal Romana Ecclesia Ceterum," Medieval Studies 8 (1946): 35-36. The fiction theory was never formulated by Roman jurists or medieval canonists. See Alan Karp, "The Academic Corporations of England in the Middle Ages: Oxford and Cambridge, 1150-1509" (Doctoral dissertation, Columbia University, 1977), pp. 142-55.

77. H.Ke Chin Wang, "The Corporate Entity Concept (or Fiction Theory) in the Year Book Period," Law Quarterly Review 58 (1942): 498-511, 59 (1943): 72-86. The controversy over corporate personality was never as important in England as on the continent because the English use or trust made group life and legal capacity possible without incorporating. For example, an unincorporated group could enjoy property rights behind a screen of trustees, natural persons in whom the title was vested under an obligation to apply it to the benefit of the group. It is frequently overlooked that the earliest university colleges originated as trusts and did not incorporate until Merton College popularized that form of organization.

78. See the arguments of Pigot and his supporters in the Abbot of Hulme's Case. Y.B. Mich. 21 Edw. 4, ff. 13-14, pl. 4, f. 69, pl. 57, Pasch, 21 Edw. 4, f. 7, pl. 21, f. 27, pl. 46 (1482).

79. Pollock and Maitland, History of English Law, 1: 491-92. For an example see Y.B. Mich. 21 Edw. 4, f. 69, pl. 57 (1482) per Starkey. For examples of the courts treating corporate and unincorporate groups alike see Thomas Madox, Firma Burgi (London, 1726), pp. 69-84, 151-53, 295-96.

80. See Heinz Lubasz, "The Corporate Borough in the Common Law of the Late Year-Book Period," Law Quarterly Review 80 (1964): 228-43.

81. The Case of Sutton's Hospital, 10 Co. Rep. 33b, 29b; and Co. Litt. 250a. Prior to the Reformation, Chief Justice Fineux held that borough and cathedral corporations were created by the king, mendicant orders by the pope, and monastic corporations by king and pope. Y.B. Mich. 14 Hen 8, f. 3, pl. 2 (1523).

82. Anon., 1 Dyer 100 (C.P. 1553).

83. Frederic William Maitland and Mary Bateson, eds., The Charters of the Borough of Cambridge (Cambridge, England, 1901), pp. viii-ix. It is sometimes claimed that the thirteenth-century franchise of the guild merchant or market guild (a commercial monopoly in the form a public association whose members controlled all aspects of a town's trade and labor) was tantamount to formal incorporation. See The Case of Sutton's Hospital, 10 Co. Rep. 30; Henry Rolle, Un abridgment des plusiers cases et resolutions del common ley, ed. Matthew Hale, 2 vols. in 1 (London, 1668), 1: 513; Madox, Firma Burgi, pp. 27, 197-208; and Lujo Brentano, "On the History and Development of Gilds," in English Gilds, ed. Lucy Toulmin Smith (London, 1870), pp. xciii-xcvi. There is, however, no evidence to substantiate these claims. Charters always refer to the guild merchant as a tangible commercial franchise and to the oranized group as a communitas. In short, they are described as different things. See Charles Gross, The Gild Merchant: A Contribution to British Municipal History, 2 vols. (Oxford, 1890), 1: 26-42, 2: 17-18, 31-36, 43, 107-8, 115, 121-22, 323-27, 354.

84. Henry Alworth Merewether and Archibald John Stephens, The History of the Boroughs and Municipal Corporations of the United Kingdom, 3 vols. (London, 1835), 1: v, xxxiii, 7, 55, 2: 781, 918-19, 1013; and Madox, Firma Burgi, pp. 27-29.

85. Gross, Gild Merchant, 1: 93, n. 3, 2: 18, 32-35, 107-8; Martin Weinbaum, The Incorporation of Boroughs, (Manchester, England, 1937), pp. 28-96; and Madox, Firma Burgi, pp. 54-114. For examples of incorporation charters in 1345, 1348, 1393, and 1440 see Calendar of the Charter Rolls, 6 vols. (London, 1902-27), 5: 36, 87-89, 336, 6: 8-11.

86. Gross, Gild Merchant, 1: 5-6, 97, n. 1, 2: 119, 121; and Frederic William Maitland, Township and Borough (Cambridge, England, 1898), pp. 19-23, 34-35. For a complete discussion of these franchises see Pollock and Maitland, History of English Law, 1: 643-69. Examples of jurisdictional and governmental franchises will be found in Henry Thomas Riley, ed., Munimenta gildhallae Londoniensis, 3 vols. in 4 pts. (London, 1859-62), 1: 102-12, 319, and 2, pt. 1: 405.

87. Henry de Bracton De legibus et consuetudinibus Angliae, ed. and

trans. Travers Twiss, 6 vols. (London, 1878-83), 1: 445-51. Also see Harold J. Laski, "The Early History of the Corporation in England," Harvard Law Review 30 (1917): 572-73.

88. The Statute of Gloucester, 1278, 6 Edw. 1, secs. 2, 4, 5, and The Statute of Quo Warranto, 1289-90, 18 Edw. 1, statute 2, Statutes of the Realm, 1: 45-46, 107. On quo warranto see J[ohn] W. Willcock, The Law of Municipal Corporations Together with a Sketch of Their History, and a Treatise on Mandamus and Quo Warranto, ed. Thomas I. Wharton (Philadelphia, 1836), pp. 247-60; and The Case of the Abbot of Strata Marcella, 9 Co. Rep. 28 (K.B. 1591).

89. Pollock and Maitland, History of English Law, 1: 669-70; and Madox, Firma Burgi, p. 26. For craft guilds see Gross, Gild Merchant, 1: 108, 111-16.

90. Y.B. 6 & 7 Edw. 2, Eyre of Kent, 1: 131 (1313-14). Also see Gross, Gild Merchant, 2: 34; Y.B. 49 Edw. 3, Liv. Ass., f. 4, pl.8, f. 321, pl. 3 (1376); The Case of Sutton's Hospital, 10 Co. Rep. 33 b; and Rolle, Abridgment, 1: 512.

91. Y.B. Hil. 2 Hen. 7, f. 13, pl. 16 (1487).

92. Robert L. Raymond, "The Genesis of the Corporation," Harvard Law Review 19 (1906): 362-64.

93. See Y.B. Mich. 1 Edw. 4, f. 7, pl. 15 (1461): Y.B. Trin. 2 Hen. 7, f. 17, pl. 1 (1487), Hil., 13 Hen. 7, f. 14, pl. 3 (1498); James Bagg's Case, 11 Co. Rep. 94 (K.B. 1616); and James Grant, A Practical Treatise on the Law of Corporations in General, as Well Aggregate as Sole, ed. Thomas I. Wharton (Philadelphia, 1854), pp. 18-19.

94. The Law of Corporations (London, 1702), pp. 2-3.

95. Y.B. Mich. 21 Edw. 4, ff. 56, 59, pl. 28 (1482); and Rolle, Abridgment, 1: 513.

96. On the corporation as a franchise see Stewart Kyd, A Treatise on the Law of Corporations, 2 vols. (London, 1793-94), 1: 14-15; James Kent, Commentaries on American Law, ed. John M. Gould, 14th ed., 4 vols. (Boston, 1896), 2: 267-68; and Black's Law Dictionary s.v. "Franchise."

97. Thus, Hobbes observed, in his chapter entitled "Of those Things that Weaken or Tend to the Dissolution of Commonwealth," one of the infirmities weakening the state was "the great number of corporations, which are as it were many lesser commonwealths in the bowels of a greater, like worms in the entrails of a natural man." Thomas Hobbes, Leviathan; or, Matter, Form, and Power of a Commonwealth Ecclesiastical and Civil, ed. Neele Fuller, Great Books of the Western World, vol. 23 (Chicago, 1952), p. 152.

98. 15 Hen. 6, ch. 6 (1437), and De privatis & illicitis statutis non faciend, 1504, 19 Hen. 7, ch. 7, Statutes of the Realm, 2: 298-99, 652-53. Such acts were in themselves, inadequate to control corporations because it was an appurtenant right of corporations to enact by-laws. Later in the century the courts therefore ruled that if a corporate ordinance is

reasonable and legal it can be made and executed without approval. The Chamberlain of London's Case, 5 Co. Rep. 63a (K.B. 1591). What was really needed was some rule of law that corporate acts beyond the scope of the corporation's purpose were null and void. This was the doctrine of ultra vires, but it was not formulated until the mid-nineteenth century. Carr, Law of Corporations, pp. 64-65.

99. Robert Brady, An Historical Treatise of Cities and Burghs or Boroughs . . ., new ed., corr. (London, 1777), pp. i-ii. Similarly judgment was given against the city of London, which was ordered to forfeit its privileges on the grounds that it presumed to act as a corporation without a royal charter, prescriptive custom not withstanding. The judgment, however, was never executed and in 1690 an act of parliament annulled the decision. Proceedings between the King and the City of London on an Information in the Nature of Quo Warranto, 8 S.T. 1039-1358 (K.B. 1681-83).

100. Carr, Law of Corporations, pp. 121, 169; Willcock, Law of Municipal Corporations, p. 5; and 12 Co. Rep. 120. Such decisions contravened a statute of Henry VIII requiring majority rule in corporations.

101. Cecil T. Carr, ed., Select Charters of Trading Companies, A.D. 1530-1707 (London, 1913), pp. xi-xvi; and Samuel Williston, "History of the Law of Business Corporations before 1800," Harvard Law Review 2 (1888): 108-14.

102. For example, in March 1629 the New England Company obtained a charter from Charles I incorporating the members into the Massachusetts Bay Company and granting extensive powers of government within their territories. But unless the control of church and state in the projected colony rested with the actual colonists the venture would fail since those stockholders remaining in England, even if sympathetic to the Puritan cause, would be under the direct supervision of the king. Accordingly, a plan was developed for all stockholders wishing to go to New England to buy up the shares of those remaining. The founders of the colony would thereby gain complete possession of the charter, and carry it with them to establish a semi-independent state under the king's nominal jurisdiction. Thomas Jefferson Wertenbaker, The Puritan Oligarchy (New York, 1947), pp. 30-31.

103. Law of Corporations, p. 2.

104. R.M. Denham, "An Historical Development of the Contract Theory in the Dartmouth College Case," Michigan Law Review 7 (1909): 209-11; and Carr, ed., Select Charters, passim. For a specific case of the crown chartering corporations to carry out state policy see George Unwin, "The Merchant Adventurers' Company in the Reign of Elizabeth," in Studies in Economic History: The Collected Papers of George Unwin, ed., R.H. Tawney (London, 1927), pp. 168-87.

105. The Case of Sutton's Hospital, 10 Co. Rep. 30b, 33b.

106. Alexander Brody, The American State and Higher Education (Washington, D.C., 1935), p. 16.